



IOWA ADMINISTRATIVE BULLETIN

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Pages 825 to 924

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other “materials deemed fitting and proper by the Administrative Rules Review Committee” include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers’ Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)“a”]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through~~ letters indicate deleted material.

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Des Moines, IA 50319
Telephone: (515)281-3568

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

- | | |
|-----------------------|----------------|
| 441 IAC 79 | (Chapter) |
| 441 IAC 79.1(249A) | (Rule) |
| 441 IAC 79.1(1) | (Subrule) |
| 441 IAC 79.1(1)“a” | (Paragraph) |
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The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 2003

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03
Jan. 17	Feb. 5	Feb. 25	Mar. 12	Mar. 14	Apr. 2	May 7	Aug. 4
Jan. 31	Feb. 19	Mar. 11	Mar. 26	Mar. 28	Apr. 16	May 21	Aug. 18
Feb. 14	Mar. 5	Mar. 25	Apr. 9	Apr. 11	Apr. 30	June 4	Sept. 1
Feb. 28	Mar. 19	Apr. 8	Apr. 23	Apr. 25	May 14	June 18	Sept. 15
Mar. 14	Apr. 2	Apr. 22	May 7	May 9	May 28	July 2	Sept. 29
Mar. 28	Apr. 16	May 6	May 21	May 23	June 11	July 16	Oct. 13
Apr. 11	Apr. 30	May 20	June 4	June 6	June 25	July 30	Oct. 27
Apr. 25	May 14	June 3	June 18	June 20	July 9	Aug. 13	Nov. 10
May 9	May 28	June 17	July 2	July 4	July 23	Aug. 27	Nov. 24
May 23	June 11	July 1	July 16	July 18	Aug. 6	Sept. 10	Dec. 8
June 6	June 25	July 15	July 30	Aug. 1	Aug. 20	Sept. 24	Dec. 22
June 20	July 9	July 29	Aug. 13	Aug. 15	Sept. 3	Oct. 8	Jan. 5 '04
July 4	July 23	Aug. 12	Aug. 27	Aug. 29	Sept. 17	Oct. 22	Jan. 19 '04
July 18	Aug. 6	Aug. 26	Sept. 10	Sept. 12	Oct. 1	Nov. 5	Feb. 2 '04
Aug. 1	Aug. 20	Sept. 9	Sept. 24	Sept. 26	Oct. 15	Nov. 19	Feb. 16 '04
Aug. 15	Sept. 3	Sept. 23	Oct. 8	Oct. 10	Oct. 29	Dec. 3	Mar. 1 '04
Aug. 29	Sept. 17	Oct. 7	Oct. 22	Oct. 24	Nov. 12	Dec. 17	Mar. 15 '04
Sept. 12	Oct. 1	Oct. 21	Nov. 5	Nov. 7	Nov. 26	Dec. 31	Mar. 29 '04
Sept. 26	Oct. 15	Nov. 4	Nov. 19	***Nov. 19***	Dec. 10	Jan. 14 '04	Apr. 12 '04
Oct. 10	Oct. 29	Nov. 18	Dec. 3	Dec. 5	Dec. 24	Jan. 28 '04	Apr. 26 '04
Oct. 24	Nov. 12	Dec. 2	Dec. 17	***Dec. 17***	Jan. 7 '04	Feb. 11 '04	May 10 '04
Nov. 7	Nov. 26	Dec. 16	Dec. 31	Jan. 2 '04	Jan. 21 '04	Feb. 25 '04	May 24 '04
Nov. 19	Dec. 10	Dec. 30	Jan. 14 '04	Jan. 16 '04	Feb. 4 '04	Mar. 10 '04	June 7 '04
Dec. 5	Dec. 24	Jan. 13 '04	Jan. 28 '04	Jan. 30 '04	Feb. 18 '04	Mar. 24 '04	June 21 '04
Dec. 17	Jan. 7 '04	Jan. 27 '04	Feb. 11 '04	Feb. 13 '04	Mar. 3 '04	Apr. 7 '04	July 5 '04
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
12	Wednesday, November 19, 2003	December 10, 2003
13	Friday, December 5, 2003	December 24, 2003
14	Wednesday, December 17, 2003	January 7, 2004

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.bates@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

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To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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ADMINISTRATIVE SERVICES DEPARTMENT[11]

Benefits, rescind 581—ch 15; adopt 11—ch 64 IAB 11/12/03 ARC 2937B	Conference Room 4 Level A-South Hoover State Office Bldg. Des Moines, Iowa	December 3, 2003 11 a.m.
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DEAF SERVICES DIVISION[429]

General, amendments to chs 1 to 4 IAB 10/29/03 ARC 2890B	Second Floor Lucas State Office Bldg. Des Moines, Iowa	November 18, 2003 10 a.m.
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DENTAL EXAMINERS BOARD[650]

Graduates of foreign dental schools, 11.2(2), 11.3(2), 11.4 IAB 11/12/03 ARC 2919B	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	December 9, 2003 10 a.m.
Impaired practitioner review committee, amendments to ch 35 IAB 11/12/03 ARC 2918B	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	December 9, 2003 10 a.m.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

University-based research utilization program, ch 63 IAB 11/12/03 ARC 2916B	Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	December 2, 2003 2 to 3 p.m.
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EDUCATIONAL EXAMINERS BOARD[282]

Mandatory reporting of contract nonrenewal or termination or resignation based on allegations of misconduct, 11.37 IAB 11/12/03 ARC 2929B	Room 2 South Second Floor Grimes State Office Bldg. Des Moines, Iowa	December 9, 2003 1 p.m.
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ELDER AFFAIRS DEPARTMENT[321]

Volunteer long-term care ombudsman program, 8.1 to 8.6 IAB 10/29/03 ARC 2904B	Director’s Conference Room Clemens Bldg. 200 Tenth St. Des Moines, Iowa	November 19, 2003 9 to 11 a.m.
Resident advocate committees; role of area agencies on aging, amendments to ch 9 IAB 10/29/03 ARC 2905B	Director’s Conference Room Clemens Bldg. 200 Tenth St. Des Moines, Iowa	November 19, 2003 9 to 11 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Manure applicator certification, 65.1, 65.19 IAB 11/12/03 ARC 2924B (See also ARC 2923B herein)	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 3, 2003 1 p.m.
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HUMAN SERVICES DEPARTMENT[441]

Expansion of prior authorization requirements and implementation of preferred drug list, 78.1(2), 78.28(1) IAB 10/29/03 ARC 2906B (See also ARC 2789B , IAB 9/17/03)	First Floor Southeast Conference Room, Side One Hoover State Office Bldg. Des Moines, Iowa	November 24, 2003 9 to 10 a.m.
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INSPECTIONS AND APPEALS DEPARTMENT[481]

Registered amusement devices, 104.1, 104.3, 104.4, 104.6; adopt ch 105 IAB 10/29/03 ARC 2912B	Conference Room 311 Lucas State Office Bldg. Des Moines, Iowa	November 19, 2003 10 a.m.
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IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

General, rescind 581—21.1, 21.9, 21.32, 21.33, ch 22; adopt 495—chs 1 to 3, 17, 19, 22, 26, 30 to 33 IAB 11/12/03 ARC 2926B	7401 Register Dr. Des Moines, Iowa	December 2, 2003 9 a.m.
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NATURAL RESOURCE COMMISSION[571]

Resource enhancement and protection program—public communication component, 33.5(1), 33.22, 33.30, 33.40, 33.50 IAB 10/29/03 ARC 2911B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 19, 2003 10:30 a.m.
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TRANSPORTATION DEPARTMENT[761]

Aeronautics, amendments to chs 700, 710, 715, 716, 720 IAB 11/12/03 ARC 2914B	Modal Division Conference Room 800 Lincoln Way Ames, Iowa	December 5, 2003 9 a.m. (If requested)
General aviation hangar revolving loan fund, rescind ch 718 IAB 11/12/03 ARC 2913B	Modal Division Conference Room 800 Lincoln Way Ames, Iowa	December 5, 2003 10 a.m. (If requested)

UTILITIES DIVISION[199]

Eligible telecommunications carrier designation for wireless carriers, 39.2(5), 39.5 IAB 9/17/03 ARC 2773B	Hearing Room 350 Maple St. Des Moines, Iowa	December 10, 2003 10 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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ARC 2933B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Notice of Termination**

Pursuant to the authority of 2003 Iowa Acts, House File 534, section 4, the Administrative Services Department terminates rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on September 17, 2003, as **ARC 2788B**. The Notice proposed to rescind 401—Chapter 1, “Department Organization,” 471—Chapter 1, “Organization and Operation,” and rule 581—19.1(19A), “State System of Personnel,” and to adopt 11—Chapter 1, “Department Organization,” Iowa Administrative Code.

An identical rule making was also Adopted and Filed Emergency as **ARC 2780B**. The Department of Administrative Services rescinded the specified chapters and adopted these amendments on August 29, 2003, effective September 2, 2003. Since no comments were received during the comment period and no changes are required to the emergency adopted rules, there is no further need to proceed with the rule making for **ARC 2788B**.

ARC 2936B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2003 Iowa Acts, House File 534, section 4, the Department of Administrative Services proposes to rescind 401—Chapter 2, “Public Records and Fair Information Practices,” 471—Chapter 2, “Fair Information Practices,” and 581—Chapter 17, “Public Records and Fair Information Practices,” and adopt 11—Chapter 4, “Public Records and Fair Information Practices,” Iowa Administrative Code.

The purpose of this proposed rule making is to consolidate uniform rules on public records and fair information practices by rescinding chapters adopted by the former Departments of General Services, Personnel, and Information Technology that now comprise the Department of Administrative Services and by adopting Chapter 4 under the new agency identification number 11 for the Department of Administrative Services.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on December 2, 2003. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

These amendments are intended to implement Iowa Code chapter 22.

The following amendments are proposed.

ITEM 1. Rescind **401—Chapter 2, 471—Chapter 2, and 581—Chapter 17**.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 4
PUBLIC RECORDS AND FAIR
INFORMATION PRACTICES

11—4.1(80GA,HF534,22) Definitions. As used in this chapter:

“Confidential record” means a record that is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the department is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Custodian” means the department, director, or another person lawfully delegated authority by the department to act for the department in implementing Iowa Code chapter 22.

“Department” means the department of administrative services.

“Open record” means a record other than a confidential record.

“Personally identifiable information” or “individual identifiers” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“Record” means the whole or a part of a “public record” as defined in Iowa Code section 22.1 that is owned by or in the physical possession of the department.

“Record system” means any group of records under the control of the department from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

11—4.2(80GA,HF534,17A,22) Statement of policy, purpose and scope. The purpose of this chapter is to facilitate broad public access to open records by establishing rules, policies and procedures to implement the fair information practices Act, Iowa Code chapter 22. Chapter 4 seeks to facilitate sound department determinations with respect to the handling of confidential records. The department is committed to complying with Iowa Code chapter 22; department staff shall cooperate with members of the public in implementing the provisions of that chapter.

11—4.3(80GA,HF534,22) Requests for access to records.

4.3(1) Location of record. A request for access to a record under the jurisdiction of the department shall be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Iowa Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319. The department will forward the request appropriately. If a request for access to a record is misdirected, department personnel will forward the request to the appropriate person within the department.

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4.3(2) Office hours. Open records shall be made available during all customary office hours, which are from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

4.3(3) Request for access. Requests for access to open records may be made in writing, by telephone or in person. Requests shall identify the particular records sought by name or other personal identifier and description in order to facilitate the location of the record. Requests shall include the name and address of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

4.3(4) Response to requests. The custodian of records under the jurisdiction of the department is authorized to grant or deny access to a record according to the provisions of this chapter and directions from the department. The decision to grant or deny access may be delegated to one or more designated employees.

Access to an open record shall be granted upon request. Unless the size or nature of the request requires time for compliance, the custodian shall respond to the request as soon as feasible. However, access to an open record may be delayed for one of the purposes authorized by Iowa Code subsection 22.8(4) or 22.10(4). The custodian shall promptly inform the requester of the reason for the delay and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that a denial is warranted under Iowa Code subsection 22.8(4) or 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 4.4(80GA, HF534, 17A, 22) and other applicable provisions of law.

4.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from department files. The custodian or a designee of the custodian shall supervise examination and copying of department records. Records shall be protected from damage and disorganization.

4.3(6) Copying. A reasonable number of copies of an open record may be made in the department's office unless printed copies are available. If copying equipment is not available in the office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere, subject to costs.

4.3(7) Fees.

a. When charged. The department is authorized to charge fees in connection with the examination or copying of records in accordance with Iowa Code section 22.3. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for regularly published records and for copies of records supplied by the department shall be posted in the department. Copies of records may be made by or for members of the public on department photocopy machines or from electronic storage systems at cost, as determined by and posted in department offices by the custodian. A charge assessed to a current employee for copies of records in the employee's own official personnel file shall not exceed \$5 per request. When the mailing of copies of records is requested, the actual costs of mailing may be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual department expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in department offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a department clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Search fees. If the request requires research or if the record or records cannot reasonably be readily retrieved, the requester will be advised of this fact. Reasonable search fees may be charged when appropriate. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.

e. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee. Upon completion, the actual fee will be calculated and the difference refunded or collected.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new or pending request for access to records from that requester.

11—4.4(80GA, HF534, 17A, 22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination or copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 4.3(80GA, HF534, 22).

4.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority satisfactory to the custodian to secure access to the record.

4.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons alleged to justify access to the confidential record and to provide any proof necessary to establish relevant facts.

4.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases that record, the custodian shall make reasonable efforts to notify any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian shall give the subject of that confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of that record the specified period of time during which disclosure will be delayed for that purpose.

4.4(4) Request denied. When the custodian denies a request for access to a confidential record, in whole or in part, the custodian shall promptly notify the requester in writing. The denial shall be signed by the custodian of the record and shall include:

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a. The name and title of the person responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record; or

c. A citation to the statute vesting discretion in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

4.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and shall indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

11—4.5(80GA, HF534, 17A, 22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

4.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record under the jurisdiction of the department to members of the public and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection. Failure of a person to request confidential record treatment for all or part of a record does not preclude the department from designating it and treating it as a confidential record.

4.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the director. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question in which portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the department by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

4.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted information to the department does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6) for all or part of that information, the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

4.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of all or part of a record under its jurisdiction to members of the public may be made when a request for its treatment as a confidential record that is not

available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

4.5(5) Request granted or deferred. If a request for confidential record treatment is granted, or if action on such a request is deferred, a copy of the record in which the material in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

4.5(6) Request denied and opportunity to seek injunction. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may, in good faith, reasonably delay examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

11—4.6(80GA, HF534, 22) Procedure by which a person who is the subject of a record may have additions, dissents, or objections entered into a record. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any department proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

11—4.7(80GA, HF534, 17A, 22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record under the jurisdiction of the department may consent to have a copy of the portion of that record concerning the subject disclosed to a third party except as provided in subrule 4.12(1). The consent must be in writing and must identify the particular record that may be disclosed, the particular person or class of persons to whom the record may be disclosed, and, where applicable, the time period during which the record may be disclosed. The subject and, where

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applicable, the person to whom the record is to be disclosed, must provide proof of identity.

11—4.8(80GA, HF534, 17A, 22) Notice to suppliers of information. When a person is requested to supply information about that person that will become part of a record under the jurisdiction of the department, the department shall notify that person of the use that will be made of the information, which persons outside the department might routinely be provided the information, which parts of the requested information are required and which are optional, and the consequences of not providing the information requested. This notice may be given in rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

11—4.9(80GA, HF534, 22) Disclosures without the consent of the subject.

4.9(1) Open records are routinely disclosed without the consent of the subject.

4.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 4.10(80GA, HF534, 22) or in any notice for a particular record system.

b. To a recipient who has provided the department with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual following a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

11—4.10(80GA, HF534, 22) Routine use.

4.10(1) Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. "Routine use" includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

4.10(2) To the extent allowed by law, the following uses are considered routine uses of all records under the jurisdiction of the department:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authori-

ties for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the department.

d. Transfers of information within the department, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the department is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

g. Distribution of lists of state employees to other than governmental entities.

h. Distribution of represented employees' payroll records to unions.

11—4.11(80GA, HF534, 22) Consensual disclosure of confidential records.

4.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to department disclosure of confidential records as provided in rule 4.7(80GA, HF534, 17A, 22).

4.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves a record under the jurisdiction of the department may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

11—4.12(80GA, HF534, 22) Release to subject.

4.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 4.6(80GA, HF534, 22). However, the department need not release the following records to the subject:

a. The identity of a person providing information to the department when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records that are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

d. As otherwise authorized by law.

4.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the department may take reasonable steps to protect confidential information relating to other subjects in the record.

11—4.13(80GA, HF534, 22) Availability of records.

4.13(1) Open records. Department records are open for public inspection and copying unless otherwise provided by rule or law.

4.13(2) Confidential records. The following records under the jurisdiction of the department may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. The department is a depository for the records of other public bodies. Records are maintained on paper, audiotape, microform, and electronic information storage and media systems. Although these records are in the physical possession of the department, the responsibility for compliance with Iowa Code chapter 22 remains with the "lawful custo-

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dian.” The public body requesting creation or storage of the record by the department is the lawful custodian (see Iowa Code section 22.1, definition of “lawful custodian”). All such records are confidentially maintained while in the possession of the department. Requests for access to any such records must be directed to the lawful custodian. Any records maintained by the department concerning the content, location, or disposition of such records are confidential in order to maintain security for access to confidential records pursuant to Iowa Code section 22.7.

b. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

c. Procurement proposals prior to completion of the evaluation process and the issuance of a notice of intent to award a contract by the appropriate procurement authority. (471—subrule 13.5(10), Iowa Administrative Code)

d. Tax records made available to the department. (Iowa Code sections 422.20 and 422.72)

e. Records which are exempt from disclosure under Iowa Code section 22.7.

f. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

g. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“e.”

h. Those portions of department staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by department staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances of criteria for the defense, prosecution, or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law;

or

(3) Give a clearly improper advantage to persons who are in an adverse position to the department. (See Iowa Code sections 17A.2 and 17A.3.)

i. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 602.10112, 622.10 and 622.11, Iowa R. Civ. P. 1.503(3), Fed. R. Civ. P. 26(b)(3), and case law.

j. Reports to government agencies which, if released, would give advantage to competitors and serve no public purpose. (Iowa Code section 22.7)

k. Vehicle accident reports submitted to the department by drivers and peace officers. (Iowa Code section 321.271)

(1) However, access shall be granted to those persons authorized by Iowa Code section 321.271.

(2) Pursuant to Iowa Code section 22.7, the lawful custodian may release the following information from peace officers' accident reports even though the reports are confidential: date, time, and location of accident; names of parties to the accident; owners and descriptions of the motor vehicles involved; name of investigating officer; names of injured; locations where motor vehicles and injured were transported; and the identification and owners of damaged property other than motor vehicles.

l. Confidential assignments of state vehicles by the state vehicle dispatcher. These records include letters/memos detailing driver assignments and plate numbers for selected vehicles pursuant to 2003 Iowa Acts, House File 534, section

52, and Iowa Code section 321.19(1).

m. Computer resource security files containing names, identifiers, and passwords of users of computer resources. This file must be kept confidential to maintain security for access to confidential records pursuant to Iowa Code section 22.7.

n. Personal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors, and school districts.

o. Communications not required by law, rule, or procedure that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making communications to that government body if the communications were available for general public examination. (See Iowa Code section 22.7.)

p. Information contained in records of the centralized employee registry created in Iowa Code chapter 252G, except to the extent that disclosure is authorized pursuant to Iowa Code chapter 252G. (See Iowa Code section 22.7.)

q. Data processing software, as defined in Iowa Code section 22.3A, which is developed by a government body.

r. Log-on identification passwords, Internet protocol addresses, private keys, or other records containing information which might lead to the disclosure of private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D.

s. Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.

t. Any other records made confidential by law.

4.13(3) Authority to release confidential records. The department may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect these records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 4.4(80GA, HF534, 17A, 22). If the department initially determines that it will release such records, the department may, where appropriate, notify interested persons and withhold the records from inspection as provided in subrule 4.4(3).

11—4.14(80GA, HF534, 22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the department by personal identifier in record systems as defined in rule 4.1(80GA, HF534, 22). Unless otherwise stated, the authority to maintain the record is provided by 2003 Iowa Acts, House File 534.

4.14(1) Retrieval. Personal identifiers may be used to retrieve information from any of the systems of records that the department maintains that contain personally identifiable information.

4.14(2) Means of storage. Paper, microfilm, microfiche, and various electronic means of storage are used to store records containing personally identifiable information.

4.14(3) Comparison. Electronic or manual data processing may be used to match, to collate, or to compare personally identifiable information in one system with personally identifiable information in another system of records or with personally identifiable information within the same system.

4.14(4) Comparison with data from outside the department. Personally identifiable information in systems of records maintained by the department is retrievable through the

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use of personal identifiers and may be compared with information from outside the department when specified by law. This comparison is allowed in situations including:

- a. Determination of any offset of a debtor's income tax refund or rebate for child support recovery or foster care recovery (2003 Iowa Acts, House File 534, section 86);
- b. Calculation of any offset against an income tax refund or rebate for default on a guaranteed student loan (2003 Iowa Acts, House File 534, section 86);
- c. Offset from any tax refund or rebate for any liability owed a state agency (2003 Iowa Acts, House File 534, section 86);
- d. Offset for any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of district court as a criminal fine, civil penalty surcharge, or court costs (2003 Iowa Acts, House File 534, section 86).

4.14(5) Nature and extent. All of the record systems listed in subrule 4.14(6) contain personally identifiable information concerning matters such as income and social security numbers.

4.14(6) Record systems with personally identifiable retrieval. The department maintains the systems or records that contain personally identifiable and confidential information as described in the following paragraphs. The legal authority for the collection of the information is listed with the description or the system.

a. Personnel files. Personnel files are maintained by the department and the employee's appointing authority. An employee may have several files depending on the purpose of the file and the records maintained within the file. Personnel files consist of records that concern individual state employees and their families, as well as applicants for state employment.

(1) Personnel files contain personal, private, and otherwise confidential records related to:

1. Applicants.
 - Preemployment information, including information gathered during background screenings;
 - Test scores.
2. Benefits.
 - Employee assistance program participation;
 - Wellness program participation;
 - Pre-tax programs;
 - Health, dental, life, and long-term disability insurance;
 - Benefit elections and miscellaneous benefit documents;
 - Medical information on the employee or a member of the employee's immediate family;
 - Medical information to support the employee's sick leave usage and fitness for duty determinations;
 - Deferred compensation;
 - Workers' compensation.
3. Employee performance and discipline.
 - Investigations incident to the employee's employment;
 - Information related to disciplinary actions;
 - Complaints, grievances, and appeals;
 - Performance planning and evaluation;
 - Training; and
 - Other information incident to the employment of individuals.

(2) These records are collected in accordance with 2003 Iowa Acts, House File 534, and Iowa Code chapters 19B, 20, 70A, 85, 85A, 85B, 91A, and 509A, and are confidential records under Iowa Code section 22.7(11) and other law because

the information in the record is private and personal, the disclosure of which would likely result in an unwarranted invasion of the privacy of the subject of the record or the subject's family. It is unlikely that the personal and private information in these records can be separated from otherwise releasable information without identifying the subject or the subject's family.

b. Employee payroll records. The payroll records system consists of records that concern individual state employees and their families.

(1) This system contains the following information:

1. Workers' compensation;
2. Health, dental, life, and long-term disability insurance;
3. Qualified domestic relations orders;
4. Charitable contributions;
5. Garnishments;
6. Pay and benefits;
7. Equal employment opportunity;
8. Training;
9. Deferred compensation; and
10. Other information incident to the employment of individuals.

(2) Records under the jurisdiction of the department are collected in accordance with 2003 Iowa Acts, House File 534, and Iowa Code chapters 19B, 20, 70A, 85, 85A, 85B, 91A, and 509A, and are confidential records in part under Iowa Code section 22.7 and other law.

(3) These records contain names, social security numbers, and other identifying numbers, and are collected in the form of paper, microfilm, tape, and computer records. Computer records permit the comparison of personally identifiable information in one record system with that in another system.

c. Vehicle dispatcher files. Vehicle assignments and credit card records may be accessed by personal identifier or by vehicle identification number. Other records which may contain personally identifiable information, but are not retrievable by it, are: mileage reports, auction information, automobile insurance premiums, pool car billings, departmental billing, motor fuel tax refund, and motor oil claims. Records are stored on paper, computer, and microfilm.

d. Capitol complex parking files. The general services enterprise maintains records concerning parking assignments, decals, gate cards, after-hours building passes, parking tickets, departmental parking coordinators, and hearings and appeals. All records except those related to hearings and appeals may be retrieved by personal identifier data. Records related to hearings and appeals are filed by date of hearing only. Records are stored on paper and computer. Records relating to hearings and appeals are also stored on audio tapes.

e. Annual bid bonds. The printing division maintains a file of annual bid bonds for vendors eligible to bid on printing contracts. The file is alphabetical by vendor name and contains only those papers necessary for execution of the bond. This record is stored on paper only.

f. Telephone directory of state employees. The information technology enterprise maintains a telephone directory of state employees. The directory contains names, department names, business addresses and telephone numbers. The publication also includes private industry information and advertising containing business names, addresses and telephone numbers. This record is stored on both paper and computer.

g. Contracts. These are records pertaining to training, consultants, and other services. These records are collected in accordance with 2003 Iowa Acts, House File 534, and

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Iowa Code chapter 19B and are confidential records in part under Iowa Code section 22.7. These records contain names, social security numbers, and other identifying numbers, and are collected in the form of paper, microfilm, tape, and computer records. Computer records permit the comparison of personally identifiable information in one record system with that in another system.

h. Vendor files. The department maintains files of vendors eligible to do business with the state of Iowa. Files may contain applications, vendor information booklets, vendor codes, commodity codes, minority-owned vendor identification information, and mailing lists. Records are stored on paper and computer.

4.14(7) Releasable information on state employees. The following information that is maintained in the state payroll system or a personnel file shall be released to the public without the consent of the employee because the information is not considered to be confidential information:

- a. The name and compensation paid to the state employee.
- b. The date on which the state employee was employed by state government.
- c. The position or positions that the state employee holds or has held with state government.
- d. The state employee's qualifications for the position or positions that the state employee holds or has held including, but not limited to, educational background and work experience.

11—4.15(80GA, HF534, 22) Other groups of records. This rule describes groups of records maintained by the department other than record systems retrieved by individual identifiers as defined in rule 4.1(80GA, HF534, 22). The records listed may contain information about individuals. These records are routinely available to the public subject to costs. Unless otherwise designated, the authority for the department to maintain the record is provided by 2003 Iowa Acts, House File 534. All records may be stored on paper, microfilm, tape or in automated data processing systems unless otherwise noted.

4.15(1) Rule-making records. Official documents executed during the promulgation of department rules and public comments. This information is collected pursuant to Iowa Code chapter 17A.

4.15(2) Board and commission records. Agendas, minutes, and materials presented to boards and commissions within the department are available from the department except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. These records may identify individuals who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. These records may also be stored on audiotapes.

4.15(3) Publications. Publications include but are not limited to news releases, annual reports, project reports, and newsletters which describe various department programs.

4.15(4) Information about individuals. Department news releases, final project reports, and newsletters may contain information about individuals, including staff or members of boards or commissions.

4.15(5) Statistical reports. Periodic reports of activity for various department programs are available from the department.

4.15(6) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 4.5(80GA, HF534, 17A, 22) or subrule 4.13(2). These rec-

ords, collected under the authority of 2003 Iowa Acts, House File 534, and Iowa Code chapters 19B, 20, 70A, 85, 85A, 85B, 91A, 97A, 97B, 97C, and 509A may contain confidential information about individuals.

4.15(7) Published materials. The department uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright laws.

4.15(8) Published manuals. The department uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

4.15(9) Mailing lists and contact lists. The department maintains lists including names, mailing addresses, and telephone numbers of state employees, commission members, officials in government of other states, and members of the general public. These lists may be used for distribution of informational material, such as newsletters, policy directives, or educational bulletins. These lists are also used to provide contacts for coordination of services or as reference information sources.

4.15(10) Authorized user lists. The information technology enterprise maintains a list of persons authorized to use their on-line services.

4.15(11) Publication sales files. The general services enterprise maintains records of persons purchasing legal publications. Records are used to produce mailing lists for renewal notification and publication mailings. Records are maintained by ZIP code. These are paper records except for mailing list production.

4.15(12) Bid/purchasing process. The department maintains records of specifications, proposals, bid documents, awards, contracts, agreements, leases, performance bonds, requisitions, purchase orders, printing orders, supply orders, and correspondence.

4.15(13) Project files. The department maintains plans, specifications, contracts, studies, drawings, photos, blueprints, requests for services, abstracts, lease/rental files, 28E agreements, space administration, and facilities records.

4.15(14) Property/equipment files. The department maintains records of inventory, assignments, distribution, maintenance, requests, operations, shipping/receiving reports, and adjustments.

4.15(15) Education program records. Educational records include a library of training courses and reference materials, a library of course documentation, TSO data sets, Iowa interagency training system, class registrations of state employees, and files of course evaluations.

4.15(16) Data processing files. Data processing files include operations logs, database user requests, job number maintenance/update, data entry format book, integrated data dictionary, computer output forms designations, system software, hardware/software configurations, problem determination/resolution records, and incident reports.

4.15(17) Federal surplus property records. Donee files include applications for eligibility and records of distribution, transfer orders of property from other federal agencies, and auction files. Auction records are filed by auction date only, but award forms may contain names of individuals purchasing property.

4.15(18) Administrative records. Administrative records include the following:

- a. Reports: weekly, monthly, annual, biennial, statistical, analysis, activity.
- b. Correspondence: public, interdepartmental, internal.
- c. Policies and procedures.

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- d. Organizational charts or table of authorized positions.
- e. Memberships: professional/technical organizations.
- f. Budget and financial records.
- g. Accounting records: accounts receivable, accounts payable, receipts, invoices, claims, vouchers, departmental billings.
- h. Requisition of equipment and supplies.

4.15(19) Legislative files. Legislative files include pending bills, enrolled bills, legislative proposals, and copies of amendments.

4.15(20) Printing files. Printing files include print requisition, plates, negatives, samples, typesetting, artwork, and production logs.

4.15(21) All other records. Records are open if not exempted from disclosure by law.

11—4.16(80GA, HF534, 22) Data processing systems. Some of the data processing systems used by this department may permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

11—4.17(80GA, HF534, 22) Applicability. This chapter does not:

1. Require the department to index or retrieve records which contain information about a person by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the department that are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs unless otherwise provided by law or agreement.

5. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. Applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, the Code of Professional Responsibility, and applicable regulations shall govern the availability of such records to the general public or to any subject individual or party to such litigation or proceedings.

11—4.18(80GA, HF534) Agency records.

4.18(1) Each agency shall maintain a file of personnel records on each employee and each applicant for employment as specified by the department in rule or policy. All employee and applicant records are under the jurisdiction of the department.

4.18(2) The appointing authority shall give each employee copies of all materials placed in the employee's file unless determined otherwise by the department. The appointing authority shall provide copies of records to the department as requested.

4.18(3) When an employee is transferred, promoted or demoted from one agency to another agency, the employee's personnel records shall be sent to the receiving appointing authority by the former appointing authority.

4.18(4) The director shall prescribe the forms to be used for collecting and recording information on employees and applicants for employment, as well as the procedures for the completion, processing, retention, and release of those forms and records, as well as the information contained on them.

These rules are intended to implement 2003 Iowa Acts, House File 534, and Iowa Code chapter 22.

ARC 2938B**ADMINISTRATIVE SERVICES DEPARTMENT[11]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2003 Iowa Acts, House File 534, section 4, the Department of Administrative Services proposes to rescind 401—Chapter 20, "Waivers and Variances," 471—Chapter 7, "Waivers," and 581—Chapter 33, "Uniform Rules for Waivers," and to adopt 11—Chapter 9, "Waivers," Iowa Administrative Code.

The purpose of this proposed rule making is to consolidate uniform rules on waivers and variances by rescinding the comparable rules adopted by the former Departments of General Services, Personnel, and Information Technology that now comprise the Department of Administrative Services, and by adopting Chapter 9 under the new agency identification number 11 for the Department of Administrative Services.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on December 2, 2003. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)2816134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

These amendments are intended to implement Iowa Code chapter 17A.

The following amendments are proposed.

ITEM 1. Rescind **401—Chapter 20, 471—Chapter 7, and 581—Chapter 33.**

ITEM 2. Adopt the following **new** chapter:

**CHAPTER 9
WAIVERS**

11—9.1(17A, 80GA, HF534) Definitions.

"Department" or "DAS" means the department of administrative services authorized by 2003 Iowa Acts, House File 534.

"Director" means the director of the department of administrative services or the director's designee.

"Person" means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, vendor, or any legal entity.

"Waiver or variance" means any action by the department that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

11—9.2(17A, 80GA, HF534) Scope. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the department in situations where no other more specifically applicable law provides for waivers. To the extent another more

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specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

11—9.3(17A,80GA,HF534) Applicability.

9.3(1) Department authority. The department may grant a waiver from a rule only if the department has jurisdiction over the rule from which waiver is requested or has final decision-making authority over a contested case in which a waiver is requested and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The department may not waive requirements created or duties imposed by statute. Any waiver must be consistent with statute.

9.3(2) Interpretive rules. This chapter shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the department does not possess delegated authority to bind the courts to any extent with its definition.

11—9.4(17A,80GA,HF534) Granting a waiver. In response to a petition completed pursuant to rule 9.6(17A, 80GA,HF534) or on the director's own motion, the director may, in the director's sole discretion, issue an order waiving in whole or in part the requirements of a rule.

9.4(1) Criteria for waiver or variance. A waiver may be granted if the director finds based on clear and convincing evidence each of the following:

- a. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
- b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

In determining whether a waiver should be granted, the director shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver or variance is sought establishes administrative deadlines, the director shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

9.4(2) Special waiver or variance of rules not precluded. These rules shall not preclude the director from granting waivers or variances in other contexts or on the basis of other standards if a statute or other department rule authorizes the director to do so; the director deems it appropriate to do so; and the director is not prohibited by state or federal statute, federal regulations, this rule, or any other rule adopted under Iowa Code chapter 17A from issuing such waivers.

9.4(3) Procurement-related waiver or variance. The director may waive a rule or grant a variance due to noncompliance with a stated requirement in a procurement, sale, or auction if the request meets all of the following criteria:

- a. The request is made prior to the issuance of a notice of intent to award a contract or the finalization of a sale.
- b. The waiver or variance will tend to promote competition rather than inhibit or reduce competition.
- c. The waiver or variance will not materially alter the substantive contents of the offer, a response to an invitation to bid or a response to a request for proposal.
- d. The noncompliance with the stated requirement is correctable (if correction is necessary) without materially or

substantially altering the substantive contents of the offer, a response to an invitation to bid or a response to a request for proposal.

e. No other person who submits an offer, a response to an invitation to bid or a response to a request for proposals is materially or substantially harmed by the waiver or variance. A person shall not be deemed to have been harmed if the waiver or variance merely increases competition.

f. Fundamental notions of good faith and fair dealing favor the issuance of a waiver or variance.

g. The waiver or variance will not result in unreasonable delay in the procurement, sale or auction and will not interfere with certainty or finality in the procurement, sale or auction.

If the stated terms of the procurement, sale or auction permit or authorize waiver or variance from the stated terms, the director may waive or vary the stated terms without regard to subrule 9.4(1).

9.4(4) Special waiver or variance not permitted. The compensation rates for publication in a newspaper for any notice, order or citation or other publication required or allowed by law as determined by the state printing administrator pursuant to Iowa Code section 618.11 shall not be waived or varied. The procedure established in this chapter does not apply to waiver or variance of contractual terms or conditions; contracts shall be waived or varied only upon their own terms. These rules do not apply to the Terrace Hill commission established in Iowa Code section 18.8A or rules adopted by the commission unless these rules are adopted by the Terrace Hill commission.

11—9.5(17A,80GA,HF534) Filing of petition for waiver. Any person may file with the department a petition requesting a waiver, in whole or in part, of a rule of the department on the ground that the application of the rule to the particular circumstances of that person would qualify for a waiver.

A petition for a waiver must be submitted in writing to the Iowa Department of Administrative Services, Office of the Director, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104, Attention: Legal Counsel. Requests for waiver may be delivered, mailed, sent by facsimile transmission or by other electronic means reasonably calculated to reach the intended recipient.

9.5(1) Appeals. If the petition relates to a pending appeal or contested case, a copy of the petition shall also be filed in the appeal proceeding or contested case using the caption of the appeal or contested case.

9.5(2) Other. If the petition does not relate to an appeal or contested case, the petition will be submitted to the department's legal counsel.

11—9.6(17A,80GA,HF534) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested, and the case number of any related pending appeal or contested case.
2. A description and citation of the specific rule (and the stated requirement in a procurement, auction or sale) from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration, and any alternative means or other condition or modification proposed to achieve the purposes of the rule.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 9.4(1) or the criteria in subrule 9.4(3) if the request relates to a procurement, sale or auction. This statement shall

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include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify the waiver.

5. A history of any prior contacts between the department and the petitioner relating to the activity that is the subject of the requested waiver including, but not limited to, a list or description of prior notices, investigative reports, advice, negotiations, consultations or conferences, a description of contested case hearings relating to the activity within the past five years, and penalties relating to the proposed waiver.

6. Any information known to the requester regarding the department's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver.

8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition, if reasonably known to the petitioner.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver or variance.

11—9.7(17A,80GA,HF534) Additional information. Prior to issuing an order granting or denying a waiver, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in conjunction with an appeal, the director may, on the director's own motion or at the petitioner's request, schedule a telephonic, ICN, or in-person meeting between the petitioner and the director.

11—9.8(17A,80GA,HF534) Notice. The department shall acknowledge the receipt of a petition by written means reasonably calculated to reach the petitioner or designee. The department shall ensure that, within 30 days of the receipt of the petition, notice and a concise summary of the content of the petition have been provided to all persons to whom notice is required by any provision of law. In addition, the department may give notice to other persons.

To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the department attesting that notice has been provided.

11—9.9(17A,80GA,HF534) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver or variance of rule filed within a contested case; (2) when the director so provides by rule or order; or (3) when a statute so requires. Prior to issuing an order granting or denying a proposed waiver, the department shall determine whether or not the facts alleged in the proposed waiver are accurate and complete.

11—9.10(17A,80GA,HF534) Ruling. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope (including any conditions) and duration of the waiver if one is issued.

9.10(1) Director discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the director, upon consideration of all relevant factors. Each petition for waiver shall be evaluated by the director based on the unique, individual circumstances set out in the petition.

9.10(2) Burden of persuasion. If the petition for waiver is based on a request pursuant to subrule 9.4(1), the burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the director should exercise discretion to grant a waiver from a department rule.

9.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

9.10(4) Administrative deadlines. When the rule from which a waiver or variance is sought establishes administrative deadlines, the director shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all affected persons.

9.10(5) Conditions. The director may place any condition on the waiver that the director finds desirable to protect the public health, safety, and welfare or other such reasonable conditions as are appropriate to achieve the objectives of the particular rule in question through alternative means.

9.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the director, a waiver may be renewed if the director finds that grounds for a waiver continue to exist.

9.10(7) Time for ruling. The director shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date or the department, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days. However, if a petition is filed in an appeal, the director shall grant or deny the petition no later than the time at which the final decision in that appeal is issued.

9.10(8) When deemed denied. Failure of the director to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director. However, the director shall remain responsible for issuing an order denying a waiver.

9.10(9) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

11—9.11(17A,80GA,HF534) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the department is authorized or required to keep confidential. The director may accordingly redact confidential information from petitions or orders prior to public inspection.

11—9.12(17A,80GA,HF534) Rules from which the department shall not grant waivers. The department shall not grant waivers from the following rules:

1. Rules regarding the taxability of pension, tax-sheltered annuity, deferred compensation, or health and dependent care benefits under the Internal Revenue Code or the Iowa Code and rules adopted thereunder.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

2. Rules governing separations, disciplinary actions and reductions in force under 581—Chapter 11 and grievances and appeals under 581—Chapter 12 (except as permitted by statute and applicable department rules).

11—9.13(17A,80GA,HF534) Summary reports. Semi-annually, the director shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the director's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

11—9.14(17A,80GA,HF534) Cancellation of a waiver. A waiver issued by the director pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the director issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented the material facts relevant to the propriety or desirability of the waiver;

2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

3. The subject of the waiver order has failed to comply with all conditions contained in the order.

11—9.15(17A,80GA,HF534) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

11—9.16(17A,80GA,HF534) Defense. After the director issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

11—9.17(17A,80GA,HF534) Judicial review. Judicial review of the department's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A.

ARC 2934B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2003 Iowa Acts, House File 534, sections 4 and 61, the Department of Administrative

Services proposes to amend and transfer rules of the former Department of Personnel[581], Chapter 14, "Leave," to Administrative Services Department[11], Chapter 63, "Leave," Iowa Administrative Code.

The purpose of this proposed rule making is to transfer rules regarding employee leave from the former Department of Personnel to the new Department of Administrative Services. The single policy change affects when approval of an intermittent or reduced work schedule for an employee on Family and Medical Leave Act leave is at the discretion of the appointing authority and when approval is mandatory, pursuant to 29 CFR 825.203(b).

Public comment concerning the proposed amendments will be accepted until 4:30 p.m. on December 2, 2003. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

These amendments are intended to implement 2003 Iowa Acts, House File 534, section 58.

The following amendments are proposed.

ITEM 1. Transfer **581—Chapter 14** to **11—Chapter 63**.

ITEM 2. Amend **11—Chapter 63** by replacing all internal references to Chapter 14 with references to Chapter 63, and by replacing all references to Iowa Code chapter 19A with references to 2003 Iowa Acts, House File 534.

ITEM 3. Amend subrule 63.4(2) as follows:

63.4(2) Leave may be taken on an intermittent leave basis or on a reduced work schedule basis where this type of leave is medically necessary. The use of intermittent or reduced work schedule leave for circumstances described in paragraphs *paragraph "a," "b" or "c"* of subrule 63.4(1) shall be at the discretion of the appointing authority. Approval of intermittent or reduced schedule leave for ~~the circumstance~~ *circumstances* described in paragraph "b," "c" or "d" of subrule 63.4(1) is mandatory if certified by a health care provider.

ITEM 4. Amend the introductory paragraph of **11—63.10(80GA,HF534)** by replacing the reference to 581—15.10(19A) with 11—64.10(80GA,HF534).

ARC 2937B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2003 Iowa Acts, House File 534, sections 4 and 61, the Department of Administrative Services hereby gives Notice of Intended Action to rescind 581—Chapter 15, "Benefits," and adopt 11—Chapter 64, "Benefits," Iowa Administrative Code.

New Chapter 64 contains updated information to conform to current contracting practices. Language regarding orga-

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

nized delivery systems (ODSs) is not included in the new chapter because the state no longer contracts with an ODS. A rule has been added to clarify when employees become eligible for benefits.

Rule 11—64.6(80GA, HF534), which pertains to deferred compensation, conforms to the federal Economic Growth and Tax Relief Reconciliation Act of 2001 and 2003 Iowa Acts, House File 534, section 69. Some language that duplicated language in the plan document has been omitted from the new rule. Most significantly, rule 11—64.6(80GA, HF534) allows more flexibility in distribution options and allows the state to market its plan to other governmental entities.

A subrule has been added to allow reimbursement for temporary living expenses, and the subrule regarding moving expenses is in compliance with policy by allowing for reimbursement for promotions but not transfers.

Rule 11—64.12(80GA, HF534), regarding tax-sheltered annuities, conforms the plan to the federal Economic Growth and Tax Relief Reconciliation Act of 2001 and clarifies current enrollment and change practices.

Rules concerning dependent care, pretax program, and health flexible spending accounts contain standardized language and clarifications regarding coverage upon termination of employment.

The waiver process set forth in 11—Chapter 9 (proposed herein as **ARC 2938B**) applies to any request for waiver from these rules.

The Department will accept public comments on the proposed amendments until 4:30 p.m. on December 3, 2003. Interested persons may submit written, oral or electronic comments to Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0105; telephone (515)281-6134; fax (515)242-5974; or E-mail Carol.Stratemeyer@iowa.gov.

There will be a public hearing on December 3, 2003, beginning at 11 a.m. in the Administrative Services Conference Room 04, Hoover State Office Building, Level A-South, at which time all interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Persons with special needs should contact the Department of Administrative Services prior to the hearing if accommodations are needed.

These rules are intended to implement 2003 Iowa Acts, House File 534, sections 58, 69 to 74, and 79.

The following amendments are proposed.

ITEM 1. Rescind 581—Chapter 15.

ITEM 2. Adopt the following new chapter:

**CHAPTER 64
BENEFITS**

11—64.1(80GA, HF534) Health benefits. The director is authorized by the executive council of Iowa to administer health benefit programs for employees of the state of Iowa.

64.1(1) The executive council of Iowa shall determine the amount of the state's contribution toward each individual non-contract-covered employee's premium cost and shall authorize the remaining premium cost to be deducted from the employee's pay. The state's contribution for each contract-covered employee shall be as provided for in collective bargaining agreements negotiated in accordance with Iowa Code chapter 20.

64.1(2) Health maintenance organizations (HMOs). Beginning with the benefit year starting January 1, 2001, any HMO seeking approval to offer benefits to state employees shall provide evidence of accreditation by the National Committee for Quality Assurance (NCQA) or the Joint Commission on Accreditation of Health Care Organizations (JCAHO). When an HMO seeks approval to offer benefits to state employees but has not achieved the required accreditation, the director may waive the accreditation requirement for up to two consecutive benefit years. The granting of such a waiver shall be based, in part, on information submitted by the HMO that outlines its intent to achieve accreditation. If the HMO has not achieved the required accreditation by the end of the second benefit year, the director shall report this information to the executive council and may recommend termination of the contract.

64.1(3) Definitions. The following definitions shall apply when used in this rule:

"Employee" means any employee of the state of Iowa covered by Iowa Code chapter 509A.

"HMO" means any health maintenance organization as defined in Iowa Code section 514B.1(6).

11—64.2(80GA, HF534) Dental insurance. The director is authorized by the executive council of Iowa to administer dental insurance programs for employees of the state of Iowa.

11—64.3(80GA, HF534) Life insurance. The director is authorized by the executive council of Iowa to administer life insurance programs for employees of the state of Iowa, except for employees of the board of regents.

11—64.4(80GA, HF534) Long-term disability insurance. The director is authorized by the executive council of Iowa to administer long-term disability insurance programs for employees of the state of Iowa, except for employees of the board of regents.

Employees who receive benefits under the state workers' compensation program shall have those benefits, except for benefits designated as medical costs pursuant to Iowa Code section 85.27 and that portion of benefits paid as attorneys' fees approved pursuant to Iowa Code section 86.39, deducted from any state long-term disability benefits received where the workers' compensation injury or illness was a substantial contributing factor to the award of long-term disability benefits. Disability benefit payments will be further reduced by primary and family social security payments as determined at the time social security disability payments commence, railroad retirement disability income, and any other state-sponsored sickness or disability benefits payable.

11—64.5(80GA, HF534) Health benefit appeals. A member who disagrees with a group health benefit company's decision on the application of group contract benefits may:

1. File a written appeal with the respective company as defined in the group contract, or
2. File a written appeal with the commissioner of insurance at the department of commerce.

11—64.6(80GA, HF534) Deferred compensation.

64.6(1) Definitions. The following definitions shall apply when used in this rule:

"Account" means any fixed annuity contract, variable annuity contract, life insurance contract, documents evidencing mutual funds, variable or guaranteed investments, or combination thereof provided for in the plan.

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“Beneficiary” means the person or estate entitled to receive benefits under the plan following the death of the participant.

“Director” means the director of the Iowa department of administrative services.

“Employee” means a nontemporary (permanent full-time or permanent part-time) employee of the employer, including full-time elected officials and members of the general assembly, except employees of the board of regents. For the purposes of enrollment, elected officials-elect and members-elect of the general assembly shall be considered employees. Persons in a joint employee relationship with the employer shall not be considered employees eligible to participate in the plan.

“Employer” means the state of Iowa and any other governmental employer that participates in the plan. Effective July 1, 2003, “employer” shall also include any governmental entity located within the state of Iowa that enters into an agreement to allow its employees to participate in the plan.

“Fiduciary” means a person or company that manages money or property for another and that must exercise the standard of care imposed by law or contract. For the purpose of these rules, “fiduciary” means the trustee, the plan administrator, investment providers, and the persons they designate to carry out or help carry out their duties or responsibilities as fiduciaries under the plan.

“Governing body” means the executive council of the state of Iowa.

“Group” means one or more employees.

“Investment provider” means a company authorized under this rule to issue an account or administer the records of such an account or accounts under the deferred compensation plan authorized by Iowa Code section 509A.12 and 2003 Iowa Acts, House File 534, section 58.

“Normal retirement age” means 65 years of age, unless an employee declares a different age pursuant to the plan’s catch-up provision. The age cannot be earlier than a year in which the employee is eligible to receive retirement benefits without an age reduction penalty from the employer-sponsored retirement plan.

“Participating employee” or “participant” means any employee or former employee of the employer who is currently deferring or who has previously deferred compensation under the plan and who retains the right to benefits under the plan.

“Plan” means the state of Iowa employee contribution plan for deferred compensation as authorized by Internal Revenue Code Section 457, Iowa Code section 509A.12 and 2003 Iowa Acts, House File 534, section 70.

“Plan administrator” means the designee of the director who is authorized to administer the plan.

“Plan year” means a calendar year.

“Retirement investors’ club” means the voluntary retirement savings program for employees designed to increase personal long-term savings. The program contains two plans, the 457 employee contributions plan and the 401(a) employer contribution plan.

“Trust” means the Iowa state employee deferred compensation trust fund created in the state treasury and under the control of the department.

“Trustee” means the director of the Iowa department of administrative services.

64.6(2) Plan administration.

a. Director’s authorization. The director is authorized by the governing body to administer a deferred compensation program for eligible employees and to enter into contracts

and service agreements with deferred compensation investment providers for the benefit of eligible employees and on behalf of the state of Iowa and other eligible employers. This rule shall govern all investment options and participant activity for the funds placed in the program.

b. Plan modification. The trustee may at any time amend, modify, or terminate the plan without the consent of the participant (or any beneficiary thereof). The plan administrator shall provide to participating employees and investment providers sufficient notice of all amendments to the plan. No amendment shall deprive participants of any of the benefits to which they are entitled under the plan with respect to deferred amounts credited to their accounts before the effective date of the amendment. If the plan is curtailed or terminated, or the acceptance of additional deferred amounts is suspended permanently, the plan administrator shall nonetheless be responsible for the supervision of the payment of benefits resulting from amounts deferred before the amendment, modification, or termination. Payment of benefits will be deferred until the participant would otherwise have been entitled to a distribution pursuant to the provisions of the plan.

c. Location of account documentation. The investment providers shall send the original annuity policies, contracts or account forms to the plan administrator. Failure to do so may result in termination of an investment provider’s contract or service agreement. The plan administrator shall keep all such original documents. Participating employees may review their own documentation during normal work hours at the department, but may not under any circumstances remove the documentation from the premises.

d. Not an employment contract. Participation in this plan by an employee shall not be construed to give a contract of employment to the participant or to alter or amend an existing employment contract of the participant, nor shall participation in this plan be construed as affording to the participant any representation or guarantee regarding the participant’s continued employment.

e. Tax relief not guaranteed. The employer, trustee, and the investment providers do not represent or guarantee that any particular federal or state of Iowa income, payroll, personal property or other tax consequences will result because of the participant’s participation in the plan. The participant is obligated to consult with the participant’s own tax representative regarding all questions of federal or state of Iowa income, payroll, personal property or other tax consequences arising from participation in the plan.

f. Investment agents. The investment providers shall, subject to the trustee’s consent, have the power to appoint agents to act for the investment providers in the administration of accounts according to the terms, conditions, and provisions of their contracts or service agreements with the plan. Investment providers are responsible for the conduct of their agents, including their adherence to the plan document and administrative rules. The plan administrator may require an investment provider to remove the authority of any agent to provide services to the plan or plan participants when cause has been shown that the agent has violated these rules or state or federal law or regulation related to the governance of the plan or agent conduct.

g. Plan expenses. Expenses incurred by the plan administrator while administering the plan, including fees and expenses approved by the plan trustee for investment advisory, custodial, record-keeping, and other plan administration and communication services, and any other reasonable and necessary expenses or charges allocable to the plan that have

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been incurred for the exclusive benefit of plan participants and that have been approved by the plan trustee may be charged to the short-term interest that has accrued in the deferred compensation trust fund created by Iowa Code section 19A.12C prior to the allocation of funds to a participant's chosen investment provider. Such expenses may also be funded from fees assessed to eligible employers who choose to offer the plan to their employees.

h. Advisory committee. There shall be appointed by the plan trustee an advisory committee. The advisory committee shall consist of representatives of the legislative, judicial, and executive branches of government, public sector employees through their authorized collective bargaining representatives, and the private sector. Such representatives shall convene in regularly scheduled meetings, in a manner, time and place chosen by the plan trustee or designee, to advise in the administration of the plan and the plan investment options.

i. Time periods. As necessary or desirable to facilitate the proper administration of the plan and consistent with the requirements of Section 457 of the Internal Revenue Code (IRC), the plan administrator may modify the time periods during which a participating employee or beneficiary is required to make any election under the plan, and the time periods for processing these elections by the plan administrator, including the making or amending of a deferral agreement, the making or amending of investment provider selections, the election of distribution commencement dates or distribution methods.

j. Supplementary information and procedures. Any explanatory brochures, pamphlets, or notices distributed by the plan shall be distributed for information purposes only and shall not override any provision of the plan or give any person any claim or right not provided for under the plan. In the event any form or other document used in administering the plan, including but not limited to enrollment forms and marketing materials, conflicts with the terms of the plan, the terms of the plan shall prevail.

k. Binding plan. The plan, and any properly adopted amendments, shall be binding on the parties and their respective heirs, administrators, trustees, successors and assignees and on all beneficiaries of the participant.

64.6(3) Rights of participating employees.

a. Exclusive benefit. The trustee shall hold the assets and income of the plan for the exclusive benefit of the participating employee or the participating employee's beneficiary.

b. Creditors. The accounts of a participating employee under the plan shall not be subject to creditors of the participating employee or the participant's beneficiary and shall be exempt from execution, attachment, prior assignment, or any other judicial relief, or order for the benefit of creditors or other third persons.

c. Designation of beneficiary. Upon enrollment, a participating employee must designate a beneficiary or beneficiaries. An employee who has an open account with an investment provider that is no longer able to open new accounts may change the employee's designated beneficiary or beneficiaries at any time thereafter by providing the plan administrator with written notice of the change on the form prescribed by the plan administrator. An employee who has an open account with an investment provider that is able to open new accounts may change the employee's designated beneficiary or beneficiaries at any time thereafter by completing the investment provider's beneficiary change form.

d. Assignment. Neither a participating employee, nor the participating employee's beneficiary, nor any other designee shall have the right to commute, sell, assign, transfer,

borrow, alienate, use as collateral or otherwise convey the right to receive any payments.

64.6(4) Trust provisions.

a. Investment options. The trustee shall adopt various investment options for the investment of deferred amounts by participating employees or their beneficiaries and shall monitor and evaluate the appropriateness of the investment options offered by the plan.

b. Designation of fiduciaries. The trustee, the plan administrator, and the persons they designate to carry out or help carry out their duties or responsibilities are fiduciaries under the plan. Each fiduciary has only those duties or responsibilities specifically assigned to fiduciaries under the plan, contractual relationship, trust, or as delegated to fiduciaries by another fiduciary. Each fiduciary may assume that any direction, information, or action of another fiduciary is proper and need not inquire into the propriety of any such action, direction, or information. No fiduciary will be responsible for the malfeasance, misfeasance, or nonfeasance of any other fiduciary, except where the fiduciary participated in such conduct, or knew or should have known of such conduct in the discharge of the fiduciary's duties under the plan and did not take reasonable steps to compel the cofiduciary to redress the wrong.

c. Fiduciary standards.

(1) All fiduciaries shall discharge their duties with respect to the plan and trust solely in the interest of the participating employees and their beneficiaries and in accordance with Iowa Code section 633.123. Such duties shall be discharged for the exclusive purpose of providing benefits to the participating employees and beneficiaries and, if determined applicable, defraying expenses of the plan.

(2) The investment providers shall discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and as defined by applicable Iowa law.

d. Trustee powers and duties. The trustee may exercise all rights or privileges granted by the provisions of the plan and trust and may agree to any alteration, modification or amendment of the plan. The trustee may take any action respecting the plan or the benefits provided under the plan that the trustee deems necessary or advisable. Persons dealing with the trustee shall not be required to inquire into the authority of the trustee with regard to any dealing in connection with the plan. The trustee may employ persons, including attorneys, auditors, investment advisors or agents, even if they are associated with the trustee, to advise or assist, and may act without independent investigation upon their recommendations. Instead of acting personally, the trustee may employ one or more agents to perform any act of administration, whether or not discretionary.

e. Trust exemption. This trust is intended to be exempt from taxation under IRC Section 501(a) and is intended to comply with IRC Section 457(g). The trustee shall be empowered to submit or designate appropriate agents to submit the plan and trust to the IRS for a determination of the eligibility of the plan under IRC Section 457, and the exempt status of the trust under IRC Section 501(a), if the trustee concludes that such a determination is desirable.

f. Held in trust. Notwithstanding any contrary provision of the plan, in accordance with IRC Section 457(g), all amounts of compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall

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be held in trust for the exclusive benefit of participants and beneficiaries under the plan. Any trust under the plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the state of Iowa. All plan assets shall be held under one or more of the following methods:

(1) Compensation deferred under the plan shall be transferred to a trust established under the plan within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, compensation deferred under the plan shall be transferred to a trust established under the plan not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

(2) Notwithstanding any contrary provision of the plan, including any annuity contract issued under the plan, in accordance with IRC Section 457(g), compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more annuity contracts, as defined in IRC Section 401(g), issued by an insurance company qualified to do business in the state where the contract was issued, for the exclusive benefit of participants and beneficiaries under the plan or held in a custodial account as described in subparagraph (3) below. For this purpose, the term "annuity contract" does not include a life, health or accident, property, casualty, or liability insurance contract. Amounts of compensation deferred under the plan shall be transferred to an annuity contract described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, amounts of compensation deferred under the plan shall be transferred to a contract described in IRC Section 401(f) not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

(3) Notwithstanding any contrary provision of the plan, in accordance with IRC Section 457(g), compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more custodial accounts for the exclusive benefit of participants and beneficiaries under the plan or held in an annuity contract as described in subparagraph (2) above. For purposes of this subparagraph, the custodian of any custodial account created pursuant to the plan must be a bank, as described in IRC Section 408(n), or a person who meets the nonbank trustee requirements of Treasury Regulations Section 1.408-2(e)(2) to (6) relating to the use of nonbank trustees.

Amounts of compensation deferred under the plan shall be transferred to a custodial account described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, amounts of compensation deferred under the plan shall be transferred to a custodial account described in IRC Section 401(f) not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

64.6(5) Absolute safeguards of the employer, trustee, their employees, and agents.

a. Questions of fact. The trustee and the plan administrator are authorized to resolve any questions of fact necessary to decide the participating employee's rights under the plan. An appeal of a decision of the plan administrator shall be made to the trustee, who shall render a final decision on behalf of the plan.

b. Plan construction. The trustee and the plan administrator are authorized to construe the plan and to resolve any ambiguity in the plan and to apply reasonable and fair procedures for the administration of the plan. An appeal of a decision of the plan administrator shall be made to the trustee, who shall render a final decision on behalf of the plan.

c. No liability for loss. The participating employee specifically agrees that the employer, the plan, the trustee, the plan administrator, or any other employee or agent of the employer, shall not be liable for any loss sustained by the participating employee or the participating employee's beneficiary for the nonperformance of duties, negligence, or any other misconduct of the above-named persons except that this paragraph shall not excuse malicious or wanton misconduct.

d. Payments suspended. The trustee, plan administrator, investment providers, their employees and agents, if in doubt concerning the correctness of their actions in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the identity of the person to receive the payment, or until the filing of an administrative appeal under Iowa Code chapter 17A, and thereafter in any state court of competent jurisdiction, a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the persons to receive them.

e. Court costs. The employer, the plan, the trustee, the plan administrator, their employees and agents are hereby held harmless from all court costs and all claims for the attorneys' fees arising from any action brought by the participating employee, or any beneficiary thereof, under the plan or to enforce their rights under the plan, including any amendments of the plan.

64.6(6) Eligibility. Except employees of the board of regents, any nontemporary executive, judicial or legislative branch employee, or employee of a governmental employer that enters into an agreement to join the plan, who is regularly scheduled for 20 or more hours of work per week or who has a fixed annual salary is eligible to defer compensation under this rule. An elected official-elect and elected members-elect of the general assembly are also eligible provided that deductions meet the requirements set forth in the plan. Final determination on eligibility shall rest with the plan administrator.

64.6(7) Communications.

a. Forms. All enrollments, elections, designations, applications and other communications by or from an employee, participant, beneficiary, or legal representative of any such person regarding that person's rights under the plan shall be made in the form and manner established by the plan administrator and shall be deemed to have been made and delivered only upon actual receipt by the person designated to receive such communication. The employer or the plan shall not be required to give effect to any such communication that is not made on the prescribed form and in the prescribed manner and that does not contain all information called for on the prescribed form.

b. Notices mailed. All notices, statements, reports, and other communications from the plan to any employee, participant, beneficiary, or legal representative of any such person shall be deemed to have been duly given when delivered to, or when mailed by first-class mail to, such person at that person's last mailing address appearing on the plan records.

64.6(8) Disposition of funds while employed.

a. Unforeseeable emergency. A participating employee may request that the plan administrator allow the withdrawal of some or all of the funds held in the participating employee's account based on an unforeseeable emergency. Forms must be completed and returned to the plan adminis-

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trator for review in order to consider a withdrawal request. The plan administrator shall determine whether the participating employee's request meets the definition of an unforeseeable emergency as provided for in federal regulations. In addition to being extraordinary and unforeseeable, an unforeseeable emergency must not be reimbursable:

(1) By insurance or otherwise;

(2) By liquidation of the participating employee's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or

(3) By cessation of deferrals under the plan.

Upon the plan administrator's approval of an unforeseeable emergency distribution, the participating employee will be required to stop current deferrals for a period of no less than six months.

A participating employee who disagrees with the initial denial of a request to withdraw funds on the basis of an unforeseeable emergency may request that the trustee reconsider the request by submitting additional written evidence of qualification or reasons why the request for withdrawal of funds from the plan should be approved.

b. Voluntary in-service distribution. A participant who is an active employee of an eligible employer shall receive a distribution of the total amount payable to the participant under the plan if the following requirements are met:

(1) The total amount payable to the participant under the plan does not exceed \$5,000 (or the dollar limit under IRC Section 411(a)(11), if greater);

(2) The participant has not previously received an in-service distribution of the total amount payable to the participant under the plan;

(3) No amount has been deferred under the plan with respect to the participant during the two-year period ending on the date of the in-service distribution; and

(4) The participant elects to receive the distribution.

The plan administrator may also elect to distribute the accumulated account value of a participant's account without consent, if the above criteria are met.

This provision is available only once in the lifetime of the participating employee. If funds are distributed under this provision, the participating employee is not eligible under the plan to utilize this provision at any other time in the future.

c. Transfers under domestic relations orders.

(1) To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law, any portion of a participating employee's account may be paid or set aside for payment to a spouse, former spouse, or child of the participating employee. The plan will determine whether the judgment, decree, or order is valid and binding on the plan and whether it is issued by a court or agency with jurisdiction over the plan. The judgment, decree or order must specify which of the participating employee's accounts are to be paid or set aside, the valuation date of the accounts and, to the extent possible, the exact value of the accounts. Where necessary to carry out the terms of such an order, a separate account shall be established with respect to the spouse, former spouse, or child who shall be entitled to choose investment providers in the same manner as the participating employee. Unless otherwise subsequently suspended or altered by federal law, all applicable taxes shall be withheld and paid from this lump sum distribution. The provisions of this subparagraph shall not be construed to authorize any amount to be distributed under the plan at a time or in a form that is not permitted under IRC Section 457.

(2) A right to receive benefits under the plan shall be reduced to the extent that any portion of a participating employee's account has been paid or set aside for payment to a spouse, former spouse, or child pursuant to these rules or to the extent that the employer or the plan is otherwise subject to a binding judgment, decree, or order for the attachment, garnishment, or execution of any portion of any account or of any distributions therefrom. The participating employee shall be deemed to have released the employer and the plan from any claim with respect to such amounts in any case in which:

1. The department, the retirement investors' club, or the plan has been served with legal process or otherwise joined in a proceeding relating to such amounts,

2. The participating employee has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending for service of process or by mail from the employer or a plan representative to the participating employee's last-known mailing address, and

3. The participating employee fails to obtain an order of the court in the proceeding relieving the employer and the plan from the obligation to comply with the judgment, decree, or order.

(3) The department, the retirement investors' club or the plan shall not be obligated to incur any cost to defend against or set aside any judgment, decree, or order relating to the division, attachment, garnishment, or execution of the participating employee's account or of any distribution therefrom.

64.6(9) Investment providers.

a. Participation. The investment providers under the plan are authorized to offer new accounts and investment products to employees only if awarded a contract or service agreement through a competitive bid process. A list of active investment providers shall be provided, upon request, to any employee or other interested party. Inactive investment providers shall participate to the extent necessary to fully discharge their duties under the applicable federal and state laws and regulations, the plan, their service agreements or contracts with the employer, and their investment accounts or contracts with participating employees.

b. Investment products. Investment products shall be limited to those that have been approved by the plan administrator. No new accounts shall be available to employees for life insurance under the plan.

c. Reports and consolidated statements. The investment providers will provide various reports to the plan administrator as well as consolidated statements, newsletters, and performance reports to participants as specified in the service agreements or contracts with investment providers.

d. Dividends and interest. The only dividend or interest options available on policies or funds are those where the dividend or interest remains within the account to increase the value of the account.

e. Quality standards. An investment provider that issues individual or group annuity contracts, or that has issued life insurance policies, must have:

(1) A minimum credit rating of at least "A-" from the A.M. Best Company financial strength rating system or equivalent ratings from two other major, recognized ratings services, and

(2) A minimum number of years in existence greater than 12.

In lieu of (1) and (2) above, an investment provider that provides mutual funds shall be selected by the plan administrator using a selection process that includes quality standard

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requirements as set forth in a competitive bid process and in the investment provider's service agreement or contract.

f. Minimum contract requirements. In addition to meeting selection requirements, an investment provider must meet and maintain the requirements set forth in its contract or service agreement with the state of Iowa.

g. Removal from participation. Failure to comply with the provisions of these rules, the investment provider contract or service agreement with the employer, or the terms and conditions of the investment provider account with the participating employee may result in termination of an investment provider contract or service agreement, and all rights therein shall be exercised by the employer.

64.6(10) Marketing and education.

a. Orientation and information meetings. Employers may hold orientation and information meetings for the benefit of their employees during normal work hours using materials developed and approved by the plan administrator. Active investment providers may make authorized presentations upon approval of individual agency or department authorities during nonwork hours. There shall be no solicitation of employees by investment providers at an employee's workplace during the employee's working hours, except as authorized in writing by the plan administrator.

b. General requirements for solicitation.

(1) An active investment provider may solicit business from participants and employees through representatives, the mail, or direct presentations.

(2) Active investment providers and representatives may solicit business at an employer's work site only with the prior permission of the agency director or other appropriate authority.

(3) Investment providers or representatives may not conduct any activity with respect to a registered investment option unless the appropriate license has been obtained.

(4) An investment provider or representative may not make a representation about an investment option that is contrary to any attribute of the option or that is misleading with respect to the option.

(5) An investment provider or representative may not state, represent, or imply that its investment options are endorsed or recommended by the plan administrator, the employing agency, the state of Iowa, or an employee of the foregoing.

(6) An investment provider or representative may not state, represent, or imply that its investment option is the only option available under the plan.

c. Disclosure.

(1) Enrollment. When soliciting business for an investment product, an active investment provider or representative shall provide each participating employee or eligible employee with a copy of the approved disclosure for that option. If a variable annuity product has several alternative investment choices, the participant must receive disclosures concerning all investment choices. An active investment provider shall notify the plan administrator in writing if the investment provider will be marketing its investment options through representatives. The notification must contain a complete identification of the representatives who will be marketing the options. Every representative and agent who enrolls eligible employees in the plan and is authorized by the investment provider to sign plan forms must be included on this notification.

(2) Disbursement methods and account values. When discussing distribution methods for an investment option, investment providers or representatives shall disclose to each

participating employee or eligible employee all potential distribution methods and the potential income derived from each method for that option.

d. Approval of a disclosure form.

(1) An investment provider shall complete and submit to the plan administrator a disclosure form for each approved investment product. If a variable annuity product has several investment choices, the plan administrator must receive all disclosures related to those investment choices. An investment provider shall complete a disclosure form on each investment product that has participating employee funds (including those no longer offered).

(2) If changes occur during the plan year, any changes must be submitted to the plan administrator for approval prior to their implementation. Disclosure forms will be updated quarterly. Even if no changes occur, an investment provider shall resubmit its disclosure form to the plan administrator for approval every year.

(3) If an investment provider or representative materially misstates a required disclosure or fails to provide disclosure, the plan administrator may sanction the investment provider or bind the investment provider to the disclosure as stated on the form.

e. Confidentiality. The plan administrator may provide to all active investment providers any information that can be made available under the department's rules. Notwithstanding any rule of the department to the contrary, the plan administrator shall make available to all active investment providers the names and home addresses of all state employees. The plan administrator may assess reasonable costs to the active investment providers to defray the expense of producing any requested information. All information obtained under the plan shall be confidential and used exclusively for purposes relating to the plan and as expressly contemplated by the service agreement or contract entered into by the investment provider.

f. Number of investment providers. Only investment providers that are selected through a competitive bid process, that are subsequently awarded a contract or service agreement, and that are authorized to do business in the state of Iowa may sell annuities, mutual funds or other approved products under the plan, and then only if the investment providers agree to the terms, conditions, and provisions of the contract or service agreement.

64.6(11) Investment option removal/replacement. The plan administrator may determine that an investment option offered under the plan is no longer acceptable for inclusion in the plan. If the plan administrator decides to remove an investment option from the plan as the result of the option's failure to meet the established evaluation criteria and according to the recommendations of consultants or advisors, the option shall be removed or phased out of the plan. Employees newly enrolling in the plan shall be informed in writing that investment options that do not meet the evaluation criteria are not open to new enrollments.

a. Notice to participant. Any participating employees already deferring to the investment option being phased out shall be informed in writing that they need to redirect future deferrals from this option to an alternative investment option offered under the plan by notifying the investment provider, unless otherwise directed, of their new investment choice.

b. Automatic transfer. If any participating employee has failed to move a remaining account balance from the investment option being phased out, the plan administrator shall instruct an investment provider to automatically move that

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participating employee's account balance into another designated alternative investment option offered under the plan.

c. Reexamination. At any time during this process, the plan administrator may reexamine the performance of the investment option being phased out and the recommendations of consultants and advisors to determine if continued inclusion of the investment option in the plan is justified.

64.6(12) Demutualization of investment providers.

a. Ballots. An investment provider that is a mutual company and that provides any annuity product or life insurance product held under the plan shall provide the plan administrator with a ballot(s) for official vote registration. The ballot(s) shall be completed and returned to the company according to the specified deadline in the instructions. The ballot(s) shall include the owner's name, policy numbers of affected contracts, name of annuitant or insured, number of shares anticipated, and the control number for the group of shares.

b. Policyholder booklet. The company shall provide the plan administrator with a policyholder booklet, as well as instructions and guide information, prior to or in conjunction with the delivery of the ballot(s). Notices of progress, time frames and meetings will also be provided to the plan administrator as such information becomes available.

c. Method of compensation. Compensation will be provided in cash according to the terms of the demutualization plan. In the event that stocks are issued in lieu of cash, the company shall provide a listing which includes participants' names, social security numbers, policy numbers, and number of shares pro rata.

d. Liquidation of stock. An arrangement will be entered into between the plan administrator and a stockbroker as soon as administratively possible in order to liquidate the stock for cash. The broker shall retain commission fees according to the arrangement entered into from the value obtained at the time of sale. The employer will not realize a tax liability nor will the participating employees.

e. Deposit of proceeds. The proceeds of the sale of the stock, less the broker commission, and any dividends issued prior to the sale of the stock, shall be made payable to the plan. Cash shall be deposited into the plan's trust fund until payment instructions are received from the participant or the participant's beneficiary.

11—64.7(80GA, HF534) Dependent care. The director administers the dependent care flexible spending account plan for employees of the state of Iowa. The plan is permitted under IRC Section 125. The plan is also a dependent care assistance plan under IRC Section 129. Administration of the plan shall comply with all applicable federal regulations, the Plan Document, and the Summary Plan Description. For purposes of this rule, the plan year is a calendar year.

64.7(1) Employee eligibility. All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the dependent care flexible spending plan. Temporary employees are not eligible to participate in this plan.

64.7(2) Enrollment. An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing dependent care deduction amounts during the plan year provided that they have a qualifying change in family status as defined in the Plan Document and the Summary Plan Description. To continue participation, employees shall reenroll each year during the open enrollment period.

64.7(3) Termination of participation in the plan. An employee may terminate participation in the plan provided that the employee has a qualifying change in status as defined in the Summary Plan Description. Employees who terminate state employment and are rehired within 30 days must resume their participation in the plan. Employees who terminate state employment and are rehired more than 30 days after termination may reenroll in the plan.

11—64.8(80GA, HF534) Premium conversion plan (pre-tax program). The director administers the premium conversion plan for employees of the state of Iowa. The plan is permitted under IRC Section 125. Pursuant to IRC Section 105, the plan is also an insured health care plan to the extent that participants use salary reduction to pay for health or dental insurance premiums. In accordance with IRC Section 79, the plan is also a group term life insurance plan to the extent that salary reduction is used for life insurance premiums. Administration of the plan shall comply with all federal regulations and the Plan Document. For purposes of this rule, the plan year is January 1 to December 31 of each year.

64.8(1) Employee eligibility. All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the pretax conversion plan. Temporary employees are not eligible to participate in the plan.

64.8(2) Enrollment. An open enrollment period, as designated by the director, shall be held for employees who wish to make changes in their current pretax status. New employees will automatically be enrolled in the plan after satisfying any waiting period requirements for group insurance unless a change form is submitted. Employees also may change their existing pretax status during the plan year if they have a qualifying change in status as defined in the Plan Document.

64.8(3) Termination of participation in the plan. An employee may terminate participation in the plan during an open enrollment period. Otherwise, an employee may terminate participation if the employee has a qualifying change in status as defined in the Plan Document.

11—64.9(80GA, HF534) Interviewing and moving expense reimbursement.

64.9(1) Interviewing expenses. If reimbursement is approved by the appointing authority, a person who interviews for state employment shall be reimbursed for expenses incurred in order to interview. Reimbursement shall be at the same rate at which an employee is reimbursed for expenses incurred during the performance of state business.

64.9(2) Moving expenses for reassigned employees. A state employee who is reassigned at the direction of the appointing authority shall be reimbursed for moving and related expenses in accordance with the policies of the department of administrative services or the applicable collective bargaining agreement. Eligibility for reimbursement shall occur when all of the following conditions exist:

- a. The employee is reassigned at the direction of the appointing authority;
- b. The reassignment requires a permanent change in duty station beyond 25 miles;
- c. The employee must change the employee's place of personal residence beyond 25 miles unless the department of administrative services has given prior written approval; and
- d. The reassignment is for the primary benefit of the state.

64.9(3) Moving expenses for newly hired or promoted employees. If reimbursement is approved by the appointing authority, a person newly hired or promoted may be reimbursed for moving and related expenses. Reimbursement

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

shall be at the same rates used for the reimbursement of a current employee who has been reassigned. Reimbursement shall not occur until the employee is on the payroll.

64.9(4) Temporary living expenses. An employee may be reimbursed for up to 90 days of temporary living expenses. Such reimbursement shall be included as part of the total amount reimbursable under the relocation policy.

64.9(5) Repayment. As a condition of receiving reimbursement for moving expenses, the recipient must sign an agreement to continue employment with the appointing authority for a period following the date of receipt of reimbursement that is deemed by the appointing authority to be commensurate with the amount of reimbursement received. In the event that the recipient leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority a proportionate fraction of the amount received for each month remaining in the period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government, then the repayment will be recouped out of the final paycheck. Recoupment must be coordinated with the accounting enterprise of the department of administrative services to ensure proper tax reporting.

11—64.10(80GA, HF534) Education financial assistance. Education financial assistance may be granted for the purpose of assisting employees in developing skills that will improve their ability to perform job responsibilities. Assistance may be in the form of direct payment to the organization or institution or by reimbursement to the employee as provided for in subrule 64.10(4).

64.10(1) Employee eligibility. Any nontemporary employee may be considered for education financial assistance.

64.10(2) Workshop, seminar, or conference attendance. The appointing authority may approve education financial assistance for an employee attending a workshop, seminar, or conference conducted by a professional, educational, or governmental organization or institution when attendance by the employee would not require a reduction in job responsibilities.

a. Assistance may be approved for meeting continuing education requirements when necessary to maintain a professional registration, certification, or license related to the duties and responsibilities of the employee's position.

b. Payment of registration fees and other costs, such as lodging, meals, and travel, shall be in accordance with the policies and procedures of the department of administrative services.

c. If attendance is outside the state of Iowa, travel must first be authorized by the executive council pursuant to 2003 Iowa Acts, House File 534, section 94.

64.10(3) Educational institution coursework. Education financial assistance to an employee taking academic courses at an educational institution, with or without educational leave, shall require the preapproval of the appointing authority and the director. Requests for reimbursement shall be on forms prescribed by the director.

a. An employee may take academic courses at any accredited educational institution (university, college, area community college) within the state. Attendance at an out-of-state institution may be approved provided that there are geographical or educational considerations which make attendance within the state impractical.

b. Reimbursement requests shall be made to the director before the employee takes the courses. If the director does

not approve the request, the employee shall not be reimbursed.

c. Reimbursement may be approved for courses taken to meet continuing education requirements when necessary to maintain a professional registration, certification, or license when the courses relate to the duties and responsibilities of the employee's position.

d. An employee receiving other financial assistance, such as scholarship aid or Veterans Administration assistance, shall be eligible to receive education financial assistance only to the extent that the total of all methods of reimbursement does not exceed 100 percent of the payment of expenses.

e. In order for the employee to be reimbursed, the employee's department shall submit to the department of administrative services the employee's original paid receipt from the educational institution, the approved education financial assistance form, and proof of the employee's successful completion of the courses as follows:

(1) Undergraduate courses shall require at least a "C-" grade.

(2) Graduate courses shall require at least a "B-" grade.

(3) Successful completion of vocational or correspondence courses or continuing education courses shall require an official certificate, diploma or notice.

64.10(4) Repayment. As a condition of receiving reimbursement for education expenses, the recipient must sign an agreement to continue employment with the appointing authority for a period following the date of receipt of reimbursement that is deemed by the appointing authority to be commensurate with the amount of reimbursement received. In the event that the recipient leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority an appropriate fraction of the amount received for each month remaining in the period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government, then the repayment will be recouped out of the final paycheck. Recoupment must be coordinated with the accounting enterprise of the department of administrative services to ensure proper tax reporting.

64.10(5) Annual report. The appointing authority shall report to the director and legislative council, not later than October 1 of each year, the direct and indirect costs to the department for education financial assistance granted to employees during the preceding fiscal year in a manner prescribed by the director.

11—64.11(80GA, HF534) Particular contracts governing. Where provisions of collective bargaining agreements differ from the provisions of this chapter, the provisions of the collective bargaining agreement shall prevail for employees covered by the collective bargaining agreements.

11—64.12(80GA, HF534) Tax-sheltered annuities (TSAs).

64.12(1) Administration. The director is authorized by 2003 Iowa Acts, House File 534, section 58, to administer a tax-sheltered annuity program for eligible employees.

64.12(2) Definitions. The following definitions shall apply when used in this rule:

"Company" means any life insurance company or mutual fund provider that issues a policy under the tax-sheltered annuity plan authorized under 2003 Iowa Acts, House File 534, section 74.

"Employee" means a full-time or part-time nontemporary employee of the state of Iowa, including employees of the

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board of regents administrative staff on the centralized payroll system.

“Employer” means the state of Iowa.

“Participating employee” means an employee participating in the plan.

“Plan” means the tax-sheltered annuity plan authorized in 2003 Iowa Acts, House File 534, section 74.

“Plan administrator” means the designee of the director who is authorized to administer the tax-sheltered annuity plan.

“Plan year” means a calendar year.

“Policy” means any retirement annuity, variable annuity, family of mutual funds or combination thereof provided by IRC Section 403(b) and 2003 Iowa Acts, House File 534, section 74.

“Salary reduction agreement” means the tax-sheltered annuity agreement signed by the participating employee to begin or change payroll deductions.

64.12(3) Eligibility.

a. Initial eligibility. Any full-time or part-time nontemporary employee who is regularly scheduled to work for 20 or more hours per week and who works for the department of education or the board of regents administrative office is eligible to defer compensation under this rule. Final determination on eligibility shall rest with the plan administrator.

b. Eligibility after terminating deferral of compensation. Any employee who terminates the deferral of compensation may choose to reenroll in the plan in accordance with paragraphs 64.12(4)“a” and “b” and 64.12(6)“b.”

64.12(4) Enrollment and termination.

a. Enrollment. Employees may enroll in the tax-sheltered annuity plan at any time. Employees are responsible for selection and monitoring of their investments. The request for a salary reduction agreement must be submitted to the employing agency’s personnel assistant for approval in accordance with subrule 64.12(11). A satisfactorily completed enrollment form must be received by the personnel assistant no later than the fifteenth day of a calendar month in order for deductions to begin with the first paycheck of the following month.

b. Forms submission. The personnel assistant shall provide the plan administrator with the applicable enrollment form in a timely manner.

c. Termination of participation in the plan. A participating employee may terminate participation in the plan by providing to the employing agency’s personnel assistant written notification on a form required by the plan administrator.

d. Availability of forms. It is the responsibility of each employee interested in participating in the plan to obtain the necessary forms from the agency of employment. It is the responsibility of each agency to inform its employees where and how they may obtain these forms. The plan administrator shall prescribe the forms and advise agencies as to their availability.

64.12(5) Tax status.

a. FICA and IPERS. The amount of compensation deferred under the salary reduction agreement shall be included in the gross wages subject to FICA and IPERS until the maximum taxable wages established by law have been reached.

b. Federal and state income taxes. The amount of earned compensation deferred under the agreement is exempt from federal and state income taxes until such time as the funds are paid or made available as provided in IRC Section 403(b).

64.12(6) Deductions from earnings.

a. When deducted. Each participating employee shall have the option as to whether the entire monthly amount of

deferred compensation shall be deducted from the first paycheck of the month, the second paycheck of the month, or be equally divided between the first and second paychecks received during the month. If the monthly deferral cannot be divided into two equal payments, the third option is not available. Deferrals will not be deducted from the third paycheck of a month.

b. Deferral amount changes. Participating employees may increase or decrease their monthly deferral amount by providing to the employing agency’s personnel assistant written notice on a form required by the plan administrator. Contributions can be changed to permit a one-time lump sum deferral from the last paycheck due to termination of employment.

c. Maximum deferral limits. Employees’ deferrals may not exceed the maximum limit set forth in federal law.

d. Minimum amount deferred. The minimum amount of deferred compensation to be deducted from the earnings of a participating employee during any month shall be \$25.

64.12(7) Companies.

a. Identification number. Each participating company shall be assigned an identification number by the plan administrator.

b. Time of payment. The plan administrator shall transmit payments to the companies within 15 business days after the last workday of each month.

c. Annual status report. Each company shall provide to the participating employee at the employee’s home address an annual status report stating the value of each participant’s policy. This practice shall be continued even after the participating employee terminates or cancels participation in the plan. These annual reports are required as long as a value exists in the contract or any activity occurs during the year.

d. Crediting of accounts. Companies must minimize crediting errors and provide timely and reasonable credit resolution.

e. Solicitation. There shall be no solicitation of employees by companies at the employees’ workplace during employees’ work hours, except as authorized by the plan administrator.

f. Dividends. The only dividend options available on cash value policies are those where the dividend remains with the company to increase the value of the policy.

g. Removal from participation. Failure to comply with the provisions of these rules will result in permanent removal as a participating company and may require that the monthly ongoing deferrals to existing contracts be discontinued, as determined by the director.

64.12(8) Disposition of funds.

a. Termination of employment. An employee who has terminated state employment (including retirement) must make arrangements directly with the company to defer distributions or withdraw funds under any option available in the policy. Distribution will be made in accordance with applicable IRS regulations.

b. Financial hardship. A participating employee may request that the company allow the withdrawal of some or all of the contributions to the policy, but not the income earned thereon, based on a financial hardship and in accordance with 401(k) regulations. New deferrals to a TSA will not be allowed after the receipt of a distribution based on financial hardship until such time as allowed by law.

c. Method of payment. The employee must notify the company of the intent to withdraw funds.

d. Federal and state withholding taxes. It shall be the responsibility of the company or mutual fund provider, when

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making payments to the former employee, to withhold the required federal and state income tax based on W-4P, to timely remit the tax to the proper government agency, and to file all necessary reports as required by federal and state regulations, including IRS Form 1099-R.

e. Federal penalties. Under IRC Section 72(t), an additional tax of 10 percent of the amount includable in gross income applies to early withdrawal for qualified plans as defined in IRC Section 4974(c). An IRC Section 403(b) contract is a qualified plan for these purposes.

64.12(9) Group plans.

a. Availability. 2003 Iowa Acts, House File 534, section 30, provides that the director may arrange for the purchase of group contracts for employees.

b. Size of groups. One or more employees shall constitute a group under this plan.

64.12(10) General.

a. Orientation and information meetings. Agencies may hold orientation and information meetings for the benefit of their employees using materials developed or approved by the plan administrator, but there shall be no solicitation of employees by companies allowed at such meetings. The presence of a representative of a company will be interpreted as solicitation.

b. Location of policies. The company shall send the original policy to the employee.

c. Number of companies. Employees shall be limited to deferring contributions to only one company at a time. Only life insurance companies or mutual fund providers authorized to do business in the state of Iowa may sell policies under the plan, and then only if they agree to perform the specified administrative functions under the plan.

d. Company changes.

(1) If a participating employee wishes to change deferrals to another company, the employee shall submit forms to the plan administrator in accordance with paragraph 15.12(6)“b.”

(2) The funds accumulated under the old policy may be transferred in total to the new policy or to another existing policy in accordance with applicable IRC Section 403(b) provisions. It is the responsibility of the employee and the company's agent to coordinate this change with the affected companies.

(3) An employee may change companies at any time during the calendar year.

e. Deferred compensation or tax-sheltered annuity participation—maximum contribution. Employees who, under the laws of the state of Iowa, are eligible for both deferred compensation and tax-sheltered annuities shall be allowed to contribute to one plan or the other, but not to both at the same time.

f. Employee termination from a tax-sheltered annuity eligible agency. When an employee leaves an agency that is eligible for tax-sheltered annuity participation under IRC Section 403(b), no further tax-sheltered annuity deductions will be allowed.

g. Direct transfer/rollover.

(1) Effective January 1, 2002, a former employee may request a direct transfer/rollover to an eligible retirement plan as defined in IRC Section 402(c)(8)(B). Eligible rollover amounts that are received by a former employee are subject to mandatory federal and state withholding as required by law.

(2) An employee may request a trustee-to-trustee transfer of funds to a defined benefit governmental plan for the purchase of permissive service credit.

64.12(11) Forms. The administration of the TSA plan shall be accomplished through the forms described in this subrule. Except as otherwise provided, all forms shall be developed by the plan administrator and distributed by the agency of employment.

a. Salary reduction agreement. This form shall authorize the plan administrator to make a stated dollar deduction from the participating employee's compensation as part of an IRC Section 403(b) contract.

b. Application for policy. The company to which the participating employee elects to defer compensation shall supply a policy application form. The participating employee shall complete the application. The completed application forms shall show the owner and beneficiary of the policy to be the participating employee.

64.12(12) Forfeiture. IRC Section 403(b)(1)(C) provides that an employee's interest in an IRC Section 403(b) contract is nonforfeitable, except for failure to pay future premiums.

64.12(13) Nontransferability. The employee's interest in the contract is nontransferable within the meaning of IRC Section 401(g). The contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose.

11—64.13(80GA, HF534) Health flexible spending account. The director administers the health flexible spending account plan for employees of the state of Iowa. The program is permitted under IRC Section 125. Administration of the plan shall comply with all applicable federal regulations and the Plan Document. To the extent that the provisions of the Plan Document or administrative rule conflict with IRC Section 125, the provisions of IRC Section 125 shall govern. For purposes of this rule, the plan year is a calendar year.

64.13(1) Employee eligibility. All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the health flexible spending account plan. Temporary employees are not eligible to participate in this plan. Employees subject to a collective bargaining agreement shall have their eligibility determined by the collective bargaining agreement.

64.13(2) Enrollment. An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing health flexible spending account salary reduction amounts during the plan year, provided they have a qualifying change in status as defined in the Plan Document, and as permitted under IRC Section 125. To continue participation, employees shall reenroll each year during the open enrollment period.

64.13(3) Modification or termination of participation in the plan. An employee may modify or terminate participation in the plan, provided the employee has a qualifying change in status as defined in the Plan Document, and as permitted under IRC Section 125. Employees who have terminated state employment and are rehired within 30 days must resume their participation in the plan. Employees who terminate state employment and are rehired more than 30 days after termination may reenroll in the plan.

64.13(4) Continuation of coverage. The health flexible spending account plan shall provide the opportunity to continue coverage as required by applicable state and federal laws.

64.13(5) Eligible health care expenses. The types of expenses eligible for reimbursement shall be consistent with medical expenses as defined under IRC Section 213.

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64.13(6) Acceptable proof of eligible expense. Only those expenses for which appropriate documentation is submitted shall be eligible for reimbursement. Such documentation shall include the date upon which the expense was incurred; sufficient evidence that the expense is an eligible health care expense; evidence that the expense has been incurred and will not be reimbursed under an otherwise qualified health plan authorized by IRC Sections 105 and 106; and the amount of such expense.

64.13(7) Appeal process. In the event that a participant disagrees with a determination as to reimbursement from the health flexible spending account plan, a formal appeals mechanism is hereby provided. The participant may submit a formal appeal in writing to the director (or designee). Such appeal must be accompanied by a previous written request for favorable consideration to the designated administrator of the plan, along with evidence as to an unfavorable determination in response to this request. Upon receipt of a qualified appeal, the director (or designee) shall provide a written determination within 30 days of receipt. Such determination shall be final and binding. This appeal process is not a contested case proceeding as defined by Iowa Code chapter 17A.

64.13(8) Third-party administrator. The director may contract with a third-party administrator to perform such actions as are reasonably necessary to administer the health flexible spending account plan.

11—64.14(80GA, HF534) Deferred compensation match plan. The director is authorized by the governing body to administer a deferred compensation match plan for employees of the state of Iowa and employees of other eligible participating governmental employers. The plan shall be qualified under IRC Section 401(a) and Iowa Code section 509A.12. The assets and income of the plan shall be held in trust for the exclusive benefit of the participating employee or the participating employee's beneficiary. The trustee shall be the director of the department of administrative services. The director shall adopt various investment options for the investment of plan funds by participating employees or their beneficiaries and shall monitor and evaluate the appropriateness of the investment options offered by the plan.

The plan shall match eligible participant contributions to the deferred compensation plan with contributions by the employer. Eligibility of participants and the rate of employer matching contributions shall be subject to determination by the trustee and the governing body. The only voluntary contributions by participants that the plan shall accept are eligible rollover contributions.

11—64.15(80GA, HF534) Insurance benefit eligibility.

64.15(1) Full-time and part-time employees with probationary or permanent status who work 20 or more hours a week are eligible for health and dental insurance coverage. For employees working 20 to 29 hours per week, the state's share of the premium is one-half the amount paid for full-time employees (30 to 40 hours per week). Temporary employees are not eligible for health or dental insurance.

64.15(2) Full-time employees with probationary or permanent status who work 30 or more hours a week are eligible for life and long-term disability insurance coverage. Temporary employees are not eligible for life and long-term disability insurance.

These rules are intended to implement 2003 Iowa Acts, House File 534, sections 58, 69 to 74, and 79.

ARC 2935B

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2003 Iowa Acts, House File 534, section 4, the Department of Administrative Services proposes to amend and transfer rules of the former Department of Personnel[581], Chapter 25, "Combined Charitable Campaign," to Administrative Services Department[11], Chapter 71, "Combined Charitable Campaign," Iowa Administrative Code.

The purpose of this proposed rule making is to transfer rules regarding the Combined Charitable Campaign to the new Department of Administrative Services[11]. Two content changes are proposed:

- Extending the solicitation period end date from September 30 to October 31.
- Specifying that applications from charities to participate in the campaign shall be submitted to the campaign administrator prior to the publicized due date instead of by the previous February 1 annual deadline.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on December 2, 2003. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail Carol.Stratemeyer@iowa.gov.

These amendments are intended to implement 2003 Iowa Acts, House File 534, section 68.

The following amendments are proposed.

ITEM 1. Transfer **581—Chapter 25 to 11—Chapter 71**.

ITEM 2. Amend **11—Chapter 71** by replacing all references to Iowa Code chapter 19A with references to 2003 Iowa Acts, House File 534, and all references to Chapter 25 with references to Chapter 71.

ITEM 3. Amend subrules **71.3(4)** and **71.3(5)** and paragraphs **71.4(4)"a"** and **"e"** by replacing references to the department of revenue and finance with references to the department of revenue.

ITEM 4. Amend rule 11—71.4(80GA, HF534), introductory paragraph, as follows:

11—71.4(80GA, HF534) Administration. The director shall select a campaign administrator to organize and manage the program. The ~~department of revenue and finance~~ *state accounting enterprise* shall serve as the campaign's fiscal agent. It shall be the sole responsibility of the campaign administrator to determine, using the criteria set forth in these rules, which charitable agencies or federations of agencies shall be eligible to participate in the campaign.

ITEM 5. Amend subrule 71.4(1) as follows:

71.4(1) Request to participate. Charitable agencies and federations of charitable agencies wishing to participate in

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the one gift campaign program shall forward ~~three copies of~~ the completed application packet developed by the campaign administrator to the ~~director~~ *campaign administrator* prior to ~~February 1 of the date publicized in January of each year, unless another date is selected by the campaign administrator and publicized.~~ *Applications received prior to the publicized date and subsequently approved shall be eligible for inclusion in the list of approved charities published prior to each annual solicitation period.* Applications received after ~~February 1 of the publicized date~~ may be accepted with the approval of the campaign administrator.

ITEM 6. Amend subrule 71.4(3) as follows:

71.4(3) Request for reconsideration. A charitable agency that has been denied ~~admission participation~~ will be allowed ten calendar days following the date of the notice of denial to file a written request for reconsideration with the director. The director shall notify agencies of the final decision within ten calendar days following the date the request was received. The director's decision shall constitute final agency action.

ITEM 7. Add the following **new** implementation sentence at the end of **11—Chapter 71**:

These rules are intended to implement 2003 Iowa Acts, House File 534, section 68.

ARC 2919B

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 11, “Licensure to Practice Dentistry or Dental Hygiene,” Iowa Administrative Code.

These amendments allow a dentist who is a graduate of a foreign dental school to apply for licensure in Iowa provided certain requirements are met. Currently, all applicants for dental licensure in Iowa must graduate from an accredited dental school approved by the Board. Only schools in the United States and some schools in Canada are currently accredited.

A graduate of a foreign dental school may be eligible for licensure if the graduate completes a full-time, supplemental dental education program of at least two academic years at an accredited dental college. The supplemental dental education program must provide didactic and clinical education to the level of a DDS or DMD graduate of the dental college. A graduate of a foreign dental school must also provide a transcript from the foreign dental school, verification of licensure from the country where the applicant graduated from dental school, and proof of English proficiency. An applicant who is a graduate of a foreign dental school must also meet all other requirements for licensure by examination or licensure by credentials.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 9, 2003. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on December 9, 2003, beginning at 10 a.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the October 16, 2003, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapter 153.

The following amendments are proposed.

ITEM 1. Amend subrule **11.2(2)**, paragraphs “a” and “e,” as follows:

a. Satisfactory evidence of graduation with a DDS or DMD from an accredited dental college approved by the board *or satisfactory evidence of meeting the requirements specified in rule 11.4(153).*

e. Evidence of successful completion of the examination *taken in the last five years*, with resulting scores, administered by the Central Regional Dental Testing Service, Inc., or the Western Regional Examining Board, Inc., ~~taken after January 1, 2001 (WREB).~~ *The WREB examination must also be taken after January 1, 2001.*

ITEM 2. Amend subrule **11.3(2)**, paragraph “a,” as follows:

a. Satisfactory evidence of graduation with a DDS or DMD from an accredited dental college approved by the board *or satisfactory evidence of meeting the requirements specified in rule 11.4(153).*

ITEM 3. Adopt the following **new** rule:

650—11.4(153) Graduates of foreign dental schools. In addition to meeting the other requirements for licensure specified in rule 11.2(147,153) or 11.3(153), an applicant for dental licensure who did not graduate with a DDS or DMD from an accredited dental college approved by the board must provide satisfactory evidence of meeting the following requirements.

11.4(1) The applicant must complete a full-time, supplemental dental education program of at least two academic years at an accredited dental college. The supplemental dental education program must provide didactic and clinical education to the level of a DDS or DMD graduate of the dental college.

11.4(2) The applicant must receive a dental diploma, degree or certificate from the accredited dental college upon successful completion of the program.

11.4(3) The applicant must present to the board the following documents:

a. An official transcript issued by the accredited dental college that verifies completion of all coursework requirements of the supplemental dental education program;

b. A dental diploma, degree or certificate issued by the accredited dental college or a certified copy thereof;

DENTAL EXAMINERS BOARD[650](cont'd)

c. A letter addressed to the board from the dean of the accredited dental college verifying that the applicant has successfully completed the requirements set forth in 11.4(1);

d. A final, official transcript verifying graduation from the foreign dental school at which the applicant originally obtained a dental degree. If the transcript is written in a language other than English, an original, official translation shall also be submitted; and

e. Verification from the appropriate governmental authority that the applicant was licensed or otherwise authorized by law to practice dentistry in the country in which the applicant received foreign dental school training.

11.4(4) The applicant must demonstrate to the satisfaction of the board an ability to read, write, speak, understand, and be understood in the English language. The applicant may demonstrate English proficiency by submitting to the board proof of a passing score on one of the following exams:

a. Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service. A passing score on TOEFL is a minimum overall score of 550 on the paper-based TOEFL or a minimum overall score of 213 on the computer-administered TOEFL.

b. Test of Spoken English (TSE) administered by the Educational Testing Service. A passing score on TSE is a minimum of 50.

This rule is intended to implement Iowa Code chapter 153.

ARC 2918B**DENTAL EXAMINERS BOARD[650]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 35, “Impaired Practitioner Review Committee,” Iowa Administrative Code.

This amendment changes the name of the Impaired Practitioner Review Committee to the Iowa Practitioner Review Committee (IPRC). The amendment also clarifies criteria for eligibility in the program. The amendment gives the Committee additional discretion in allowing practitioners into the program if there is an unrelated complaint pending before the Board. The amendment clarifies that information reported on a license or registration application or renewal form may be considered a self-report at the request of the practitioner.

This amendment also clarifies that the term “impairment” does not include various sexual problems. The purpose of the Committee is also revised to reflect that the Committee serves practitioners impaired by chronic health conditions, in addition to substance abuse, and that maintenance may be a more realistic goal than recovery or rehabilitation. The amendment also makes it clear that the Committee advocates both for the health of the practitioner and for the public health and safety.

In addition, the amendment clarifies Committee membership, IPRC policies, terms and length of participation, confidentiality provisions, and when information related to partic-

ipation in the program may be shared. A new subrule related to monitoring costs has also been added. This subrule clarifies that participants may be responsible for paying the cost of monitoring compliance with contract terms. This provision was previously spelled out in individual recovery contracts.

This amendment is subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendment on or before December 9, 2003. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on December 9, 2003, beginning at 10 a.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

This amendment was approved at the October 16, 2003, regular meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapters 147 and 153.

The following amendment is proposed.

Amend **650—Chapter 35** as follows:

CHAPTER 35
~~IMPAIRED~~ IOWA PRACTITIONER
REVIEW COMMITTEE

650—35.1(153,272C) Impaired Iowa practitioner review committee. Pursuant to the authority of Iowa Code section 272C.3(1)“k,” the board establishes the ~~impaired Iowa~~ practitioner review committee.

35.1(1) Definitions.

“~~Impaired Iowa~~ practitioner program contract” or “contract” means the written document ~~establishing~~ *executed by a practitioner and the IPRC that establishes* the terms for participation in the ~~impaired practitioner~~ program prepared by the ~~impaired practitioner review committee~~.

“Impairment” means an inability, *or significant potential for inability*, to practice dentistry, dental hygiene, or dental assisting with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any ~~neuro-psychological~~ *mental* or physical disorder or disability. *For the purposes of this program, “impairment” does not include sexual dysfunction, sexual addiction, sexual compulsivity, paraphilia, or other sexual disorder.*

“Initial agreement” means the written document establishing the initial terms for participation in the ~~impaired practitioner recovery~~ program.

“IPP” or “program” means the ~~impaired Iowa~~ practitioner program.

“IPRC” or “committee” means the ~~impaired Iowa~~ practitioner review committee.

“Practitioner” means a licensed dentist or dental hygienist or a registered dental assistant *or a person applying for a license or registration.*

“Self-report” means the practitioner providing written or oral notification to the ~~board~~ *IPRC* that the practitioner has been, *is* or may be diagnosed as having an impairment prior to the board’s receiving a complaint or report alleging an im-

DENTAL EXAMINERS BOARD[650](cont'd)

pairment prior to the date of self-report. *Information related to an impairment or a potential impairment that is provided on a license or registration application or renewal form may be considered a self-report upon the request of the practitioner, authorization from the license committee, and agreement by the IPRC.*

35.1(2) Purpose. The IPRC evaluates, assists, and monitors and, as necessary, makes reports to the board on the recovery, or rehabilitation, or maintenance of dentists, hygienists, or assistants who self-report impairments. *As necessary, the committee notifies the board in the event of noncompliance with contract provisions. The IPRC is both an advocate for the health of a practitioner and a means to protect the health and safety of the public.* Reports on the activities of the IPRC shall be made to the board on a quarterly basis.

35.1(3) Composition of the committee. The chairperson of the board shall appoint the members of the IPRC. The membership of the IPRC may include, but is not limited to:

- a. Executive director of the board or the director's designee from the board's staff;
- b. One practitioner who has remained free of addiction for a period of no less than two years since successfully completing following successful completion of a board-approved recovery program, a board-ordered probation for drug or alcohol dependency, addiction, or abuse, or an IPRC contract;
- c. One physician/counselor with expertise in substance abuse/addiction treatment programs;
- d. One physician with expertise in the diagnosis and treatment of neuropsychological disorders and disabilities psychiatrist or one psychologist; and
- e. One public member.

35.1(4) Eligibility. To be eligible for participation in the IPP, a practitioner must self-report an impairment or suspected impairment directly to the office of the board. A practitioner is deemed ineligible to participate in the program if the board or license committee or IPRC finds sufficient evidence of any of the following:

- a. The practitioner is engaged in the unlawful diversion or distribution of controlled substances or illegal substances to a third person or for personal profit or gain;
- b. to d. No change.
- e. The practitioner has been subject to a civil administrative or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or a foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of dentistry, or dental hygiene, or dental assisting; or
- f. The practitioner failed to provide truthful provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the board or committee; or
- g. There is currently a complaint before the board related to an impairment.

35.1(5) Type of program. The IPP is an individualized recovery, or rehabilitation, or maintenance program designed to meet the specific needs of the impaired practitioner. The committee, in consultation with the practitioner and, upon the recommendation of an IPRC-approved evaluator, shall determine the type of recovery, or rehabilitation, or maintenance program required to treat the practitioner's impairment. The committee shall prepare a contract, to be signed by the practitioner, that shall provide a detailed description of the goals of the program, the requirements for successful completion participation, and the practitioner's obligations therein.

35.1(6) Terms of participation. A practitioner shall agree to comply with the terms for participation in the IPP established in the initial agreement and contract. Terms of participation specified in the contract shall include, but are not limited to:

a. Duration. The length of time a practitioner shall participate in the program shall be determined by the committee in accordance with the following:

(1) Participation in the program for practitioners impaired as a result of chemical dependency or alcohol or substance abuse or addiction is set at a minimum of four years.

(2) Length of participation in the program for practitioners with impairments resulting from neuropsychological or physical disorders or disabilities will vary depending upon the recommendations for treatment provided by a qualified an approved evaluator designated by the committee to establish an appropriate treatment protocol and the determination of the IPRC following review of all relevant information.

b. No change.

c. Practice restrictions. The IPRC may impose restrictions on the license to practice dentistry or dental hygiene or registration to practice dental assisting as a term of the initial agreement or contract until such time as it receives a report from an approved evaluator and the IPRC determines, based on all relevant information, that the practitioner is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a practitioner is required to agree to restrict practice in accordance with the terms specified in the initial agreement or contract. In the event that the practitioner refuses to agree to or comply with the restrictions established in the initial agreement or contract, the committee shall refer the practitioner to the board for appropriate action.

d. Monitoring costs. A provision for payment of the actual costs associated with monitoring a practitioner's compliance with the terms of the IPRC initial agreement or contract may be included in the initial agreement and contract. Actual costs include mileage, meals, travel expenses, hourly investigative time, and all incidental expenses associated with monitoring compliance, which shall be considered repayment receipts as defined in Iowa Code section 8.2.

35.1(7) Limitations. The IPRC establishes the terms and monitors a participant's compliance with the program specified in the initial agreement and contract. The IPRC is not responsible for participants who fail to comply with the terms of or successfully complete the IPP. Participation in the program under the auspices of the IPRC shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of dentistry, or dental hygiene, or dental assisting by a participant shall be referred to the board for appropriate action.

35.1(8) Confidentiality. The IPRC is subject to the provisions governing confidentiality established in Information in the possession of the board or the committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about practitioners in the program shall not be disclosed to the public. Participation in the IPP under the auspices of the IPRC is not a matter of public record. Information about participants may only be shared in the following circumstances:

a. Upon authorization or prior to successful completion of a contract, the IPRC may communicate information about an IPRC participant to dental regulatory authorities or the impaired practitioner program of any jurisdiction of the

DENTAL EXAMINERS BOARD[650](cont'd)

United States in which the participant is currently licensed to practice dentistry, dental hygiene, or dental assisting, or in which the practitioner is seeking licensure.

b. The IPRC may communicate information about an IPRC participant to any person assisting in the participant's treatment, recovery, rehabilitation, monitoring, or maintenance.

c. The IPRC may communicate information about an IPRC participant to the board in the event that a participant does not comply with the terms of the initial agreement or contract. The IPRC may provide the board with a participant's IPRC file in the event that the participant does not comply with the terms of the initial agreement or contract and the IPRC refers the case to the board for appropriate action.

d. The IPRC shall report to the board any knowledge of violations of administrative rules or statutes unrelated to the impairment.

This rule is intended to implement Iowa Code section 272C.3(1)“k.”

ARC 2916B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt new Chapter 63, “University-Based Research Utilization Program,” Iowa Administrative Code.

The proposed new rules implement the University-Based Research Utilization Program as authorized by 2003 Iowa Acts, House File 692, sections 111 to 113, and House File 683, section 82. The purpose of the University-Based Research Utilization Program is to promote the adoption of new technology developed at Iowa State University, the University of Iowa and the University of Northern Iowa in a way that will spur the establishment and growth of new business enterprises and promote new economic development within the state.

The rules establish application and award procedures and describe the tax benefits available for participating companies. The program provides tax credits to businesses that utilize a technology based on a patent issued to a Regents university on or after July 1, 2003. Tax credits are also available to university employees who were responsible for developing the technology leading to a patent issued to a Regents university and utilized by an approved business.

Public comments concerning the proposed rules will be accepted until 4:30 p.m. on December 2, 2003. Interested persons may submit written or oral comments by contacting Allen Williams, Business Development Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515) 242-4771.

A public hearing to receive comments about the proposed new chapter will be held on December 2, 2003, from 2 to 3 p.m. at the above address in the northwest conference room on the second floor.

These rules are intended to implement 2003 Iowa Acts, House File 692, sections 111 to 113, and 2003 Iowa Acts, House File 683, section 82.

The following new chapter is proposed.

CHAPTER 63 UNIVERSITY-BASED RESEARCH UTILIZATION PROGRAM

261—63.1(80GA, HF692, HF683) Purpose. The purpose of the university-based research utilization program is to promote the adoption of new technology developed at the state universities of Iowa state university, the university of Iowa and the university of northern Iowa in a way that will spur the establishment and growth of new business enterprises and promote new economic development within the state.

261—63.2(80GA, HF692, HF683) Definitions.

“Act” means 2003 Iowa Acts, House File 692, sections 111 to 113, and House File 683, section 82.

“Approved business” means an eligible business that has been approved to receive benefits under this program.

“Department” means the Iowa department of economic development.

“Director” means the director of the Iowa department of economic development.

“Eligible business” means a business that meets the requirements of rule 261—63.3(80GA, HF692, HF683) and that is either a new business or a business that has been in existence for a period of less than one year prior to applying for benefits under this program.

“Regents university” means Iowa state university, the university of Iowa or the university of northern Iowa.

“Tax credit certificate” means a document issued by the department to an eligible business or university employee which indicates the amount of income tax credit to which the eligible business or university employee is entitled. A tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the tax credit certificate, the tax year in which the credit may first be claimed and any other information required by the department or the Iowa department of revenue.

“University employee” means a regents university employee, or former regents university employee, who is responsible for developing the technology for which the regents university has received a patent which is then used by the eligible business and whose name is listed on the patent.

261—63.3(80GA, HF692, HF683) Business eligibility. A new or existing business may apply to the department to receive tax incentives if it meets all of the following:

63.3(1) The business utilizes a technology based on a patent awarded to a regents university.

63.3(2) The technology to be utilized by the business is based upon a patent awarded after July 1, 2003.

63.3(3) If the business has been in existence for more than one year prior to applying, the business shall organize a separate company to utilize the technology in order to be eligible for benefits under this program. The new business may then apply for benefits under this program.

63.3(4) The business shall develop a five-year business plan that must then be approved by the department. The five-year business plan shall include information concerning the applicant's Iowa employment goals and projected positive

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

impact on the Iowa economy. The department will only approve applications whose business plans show sufficient potential positive impact on Iowa employment and economic development.

63.3(5) The business must be an applicant that has at least one full-time equivalent employee or will have at least two full-time equivalent employees within one year of approval of the business's application.

261—63.4(80GA, HF692, HF683) Program benefits.

63.4(1) Tax credit benefits to the business. An approved business under this program shall receive an income tax credit each year for up to five years to be used to offset taxes imposed in Iowa Code chapter 422, division II, personal income taxes, or division III, business income taxes. An individual may claim the business tax credit under this program by means of a partnership, limited liability company, S corporation, or estate or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro-rata share of the individual's earnings from the partnership, limited liability company, corporation, or estate or trust.

63.4(2) Tax credit benefits to university employee(s). A university employee or group of employees who are responsible for developing the technology leading to the patent by the regents university which is then utilized by the approved business shall be eligible for an income tax credit under this program. This credit is available each year for up to five years, to be used to offset taxes imposed in Iowa Code chapter 422, division II, personal income taxes. To be eligible to receive this tax credit, the university employee's name or employees' names must be listed on the patent awarded to the regents university.

63.4(3) Assigning tax credits. A tax credit shall not be claimed under this program unless a tax credit certificate issued by the Iowa department of economic development is attached to the taxpayer's tax return for the tax year for which the tax credit is claimed. The amount of a tax credit allowed under this program shall equal the amount listed on a tax credit certificate issued by the Iowa department of economic development pursuant to the Act. A tax credit certificate shall not be transferable. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the taxpayer's tax liability for the following five years or until depleted, whichever occurs first. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit. The tax credit certificate issued to an approved business may be used by another business with which the approved business is affiliated and with whom the approved business files state income tax returns on a consolidated basis. The Iowa department of economic development shall notify the Iowa department of revenue when a tax credit certificate is issued. The notification shall include the name and tax identification number appearing on any tax credit certificate.

63.4(4) Determination of level of the tax credit benefits. For the five tax years following the tax year in which an eligible business is approved under the program, the Iowa department of revenue shall provide the department with summary information regarding the annual tax returns filed by the approved business. Upon receiving the summary tax return information, the department will make a determination of the amount of tax credits the approved business and university employee may receive.

a. Business tax benefits. Effective for the fiscal year beginning July 1, 2004, and for subsequent fiscal years, the department shall issue a tax credit certificate to the approved

business. The value of the tax credit certificate issued by the department for each of the five years following the tax year in which the business is approved under the program shall equal 30 percent of the tax liability of the approved business's tax return for the previous tax year before the approved business's tax liability is lessened or eliminated by tax credits received under this program from prior years. The value of a tax credit certificate issued to an approved business shall not exceed \$225,000 in any single tax year and the total aggregate value of tax credit certificates issued to an approved business over a five-year period shall not exceed a total of \$600,000.

b. University employee(s) tax benefits. Effective for the fiscal year beginning July 1, 2004, and for subsequent fiscal years, the department shall issue a tax credit certificate to the eligible university employee(s). The value of the tax credit certificate issued by the department for each of the five years following the tax year in which the business is approved shall equal 10 percent of the tax liability for the previous tax year of the approved business before the approved business's tax liability is lessened or eliminated by tax credits received under this program from prior years. If more than one university employee is listed on the patent awarded to the regents university, the tax credit certificate value equal to 10 percent of the tax liability of the approved business shall be divided equally among the individuals listed on the patent and individual tax credit certificates shall be issued to each university employee listed on the patent. Each year the total value of a tax credit certificate or certificates issued to a university employee, or group of employees, for each technology utilized by an approved business shall not exceed \$75,000 and, for each technology utilized by an approved business, the total aggregate value of certificates issued to the university employee or employees over a five-year period shall not exceed \$200,000.

c. Fiscal limitations on tax credit certificates. For the fiscal year beginning July 1, 2004, not more than \$2 million worth of tax credit certificates in total shall be issued under this program. For the fiscal year beginning July 1, 2005, and every fiscal year thereafter, not more than \$10 million worth of tax credit certificates shall be issued under this program. In the event that the aggregate amount of eligible tax credits exceeds the limitations stated in this paragraph, the department will prorate in a fair and equitable manner the amounts of the tax credit certificates that it issues.

261—63.5(80GA, HF692, HF683) Funding appropriation to the regents university. In accordance with 2003 Iowa Acts, House File 683, section 82, the department will annually make a determination of the amount that will equal 30 percent of the tax liability of the approved business before the approved business's tax liability is lessened or eliminated by tax credits received under this program from prior years. This amount will then be appropriated to the regents university budget from the general fund of the state. A regents university appropriation under this rule shall not exceed \$250,000 per year for each patented technology utilized by an approved business. For each patented technology utilized, the regents university's aggregate appropriation under this rule over a five-year period shall not exceed \$600,000. The department shall maintain records for each regents university during each fiscal year regarding the amount of appropriations each regents university is entitled to receive pursuant to 2003 Iowa Acts, House File 683, section 82.

261—63.6(80GA, HF692, HF683) Business application. To receive designation as an approved business for the

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

university-based research utilization program, a business shall submit an application in the format specified by the Iowa department of economic development. An eligible business shall submit an application on its own behalf.

261—63.7(80GA, HF692, HF683) Application and award process. Iowa department of economic development staff will review completed applications. Department staff will prepare a summary for the director who shall make a final decision on the application. The director may approve, defer or deny the application. Applications will be approved if the eligible business can demonstrate that it will provide a sufficient positive impact on Iowa employment and economic development.

261—63.8(80GA, HF692, HF683) Program administration.

63.8(1) Compliance. An approved business shall submit an annual report to the department describing the business's success, or lack thereof, in meeting its goals as stated in its five-year business plan. The submitted annual report shall also include the Employers Contribution and Payroll Report filed by the business with the Iowa department of workforce development. This report includes employment statistics and taxable wages paid by the approved business, and will be used to measure the business's success in creating new jobs.

63.8(2) Nonperformance. If the department determines that the activities of the approved business are not providing the benefits to Iowa employment and economic development as projected in the business's approved five-year business plan, the department shall not issue tax credit certificates for that year to the business or university employee(s), and shall determine any related regents university appropriation for that particular approved business to be zero for that year.

These rules are intended to implement 2003 Iowa Acts, House File 692, sections 111 to 113, and 2003 Iowa Acts, House File 683, section 82.

ARC 2929B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 11, "Complaints, Investigations, Contested Case Hearings," Iowa Administrative Code.

This new rule sets forth procedures to implement the requirement in 2003 Iowa Acts, House File 549, for mandatory reporting of contract terminations and resignations based upon allegations of misconduct.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, December 9, 2003, at 1 p.m. in Room 2 South, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rule. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed rule before 4 p.m. on Friday, December 12, 2003. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address, or sent by E-mail to anne.kruse@ed.state.ia.us, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272 as amended by 2003 Iowa Acts, House File 549, section 16.

The following amendment is proposed.

Amend 282—Chapter 11 by adopting the following **new** rule:

282—11.37(272) Mandatory reporting of contract nonrenewal or termination or resignation based on allegations of misconduct. The board of directors of a school district or area education agency, the superintendent of a school district or the chief administrator of an area education agency, and the authorities in charge of a nonpublic school shall report to the board the nonrenewal or termination, for reasons of alleged or actual misconduct, of a person's contract executed under Iowa Code sections 279.12, 279.13, 279.15 through 279.21, 279.23, and 279.24, and the resignation of a person who holds a license, certificate, or authorization issued by the board as a result of or following an incident or allegation of misconduct that, if proven, would constitute a violation of 282—paragraph 12.2(2)"a," when the board or reporting official has a good-faith belief that the incident occurred or the allegation is true.

11.37(1) Method of reporting. The report required by this rule may be made by completion and filing of the complaint form described in subrule 11.4(2) or by the submission of a letter to the executive director of the board which includes: the full name, address, telephone number, title and signature of the reporter; the full name, address, and telephone number of the person who holds a license, certificate or authorization issued by the board; a concise statement of the circumstances under which the termination, nonrenewal, or resignation occurred; and any additional information or documentation which the reporter believes will be relevant to assessment of the report pursuant to subrule 11.37(4).

11.37(2) Timely reporting required. The report required by this rule shall be filed within 60 days of the date of local board action on the termination or resignation.

11.37(3) Confidentiality of report. Information reported to the board in accordance with this rule is privileged and confidential, and, except as provided in Iowa Code section 272.13, is not subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than the respondent and the board and its employees and agents involved in licensee discipline, and is not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

11.37(4) Action upon receipt of report.

a. Upon receipt of a report under this rule, the executive director of the board shall review the information reported to determine whether a complaint investigation should be initiated.

b. In making this determination, the executive director shall consider the nature and seriousness of the reported misconduct in relation to the position sought or held, the time elapsed since the misconduct, the degree of rehabilitation, the likelihood that the individual will commit the same misconduct again, and the number of reported incidents of misconduct.

c. If the executive director determines a complaint should not be initiated, no further formal action will be taken and the matter will be closed.

d. If the executive director determines a complaint investigation should be initiated, the executive director shall assign the matter for investigation pursuant to rule 282—11.5(272).

11.37(5) Proceedings upon investigation. From the time of initiation of an investigation, the matter will be processed in the same manner as a complaint filed under rule 282—11.4(17A,272).

ARC 2924B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 459.314, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

These proposed amendments implement changes to manure applicator certification provisions as required by 2003 Iowa Acts, House File 644. The proposed amendments include updated terminology, certification fees and education fees for confinement site and commercial manure applicators.

Any interested person may make written suggestions or comments on the proposed amendments on or before December 3, 2003. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa, 50319-0034; fax (515)281-8895.

Also, there will be a public hearing on December 3, 2003, at 1 p.m. in the Fourth Floor West Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, people will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These amendments were also Adopted and Filed Without Notice and are published herein as **ARC 2923B**. The content of that submission is incorporated by reference.

These amendments are intended to implement 2003 Iowa Acts, House File 644.

INSURANCE DIVISION**Notice of Approval of
Workers’ Compensation Rate Filing**

Pursuant to the provisions of Iowa Code chapter 515A, the National Council on Compensation Insurance, Inc. (NCCI) submitted a rate filing on August 22, 2003. Notice of the filing was published in the Iowa Administrative Bulletin on September 17, 2003. No request for a hearing on the rate filing was received.

The rate filing proposes an overall increase in rates of +6.3% and an increase in the expense constant from \$220 to \$240 for a combined premium level increase of +6.4%. Based on an independent review of the NCCI proposal, the Commissioner finds the proposed manual rates not to be excessive, inadequate, or unfairly discriminatory.

Therese M. Vaughan, Commissioner of Insurance, ordered that the August 22, 2003, rate filing is approved to be effective January 1, 2004.

ARC 2926B**IOWA PUBLIC EMPLOYEES’
RETIREMENT SYSTEM[495]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 97B.4 and 2003 Iowa Acts, House File 534, section 170, the Iowa Public Employees’ Retirement System (IPERS) hereby gives Notice of Intended Action to amend 581—Chapter 21, “Iowa Public Employees’ Retirement System”; to rescind 581—Chapter 22, “Federal Social Security”; and to adopt 495—Chapter 1, “Organization,” Chapter 2, “Investment Board,” Chapter 3, “Benefits Advisory Committee,” Chapter 17, “Public Records and Fair Information Practices,” Chapter 19, “Declaratory Orders,” Chapter 22, “Federal Social Security,” Chapter 26, “Appeals and Contested Cases—Proceedings,” Chapter 30, “Petitions for Rule Making,” Chapter 31, “Agency Procedure for Rule Making,” Chapter 32, “Qualified Benefits Arrangement,” and Chapter 33, “Uniform Rules for Waivers,” Iowa Administrative Code.

IPERS intends to continue to amend its rules under 581—Chapter 21 over the next year and to transfer those rules into the chapters of [495]. IPERS will rescind rules under 581—Chapter 21 as appropriate during the transfer.

These amendments were prepared after consultation with the IPERS legal, benefits, investments and operational units and the members of the investment board and the benefits advisory committee.

There are no waiver provisions included in the proposed new rules other than those specifically identified in Chapter 33.

Any person may make written suggestions or comments on the proposed amendments on or before December 2, 2003. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish

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to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-3081. Comments may also be submitted by fax to (515)281-0045, or by E-mail to info@ipers.org.

There will be a public hearing on December 2, 2003, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Persons who attend the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

These amendments are intended to implement Iowa Code chapter 97B as amended by 2003 Iowa Acts, House File 534, sections 170 to 181.

The following amendments are proposed.

ITEM 1. Rescind and reserve **581—21.1(97B)**, **581—21.9(97B)**, **581—21.32(97B)**, **581—21.33(17A,97B)** and **581—Chapter 22**.

ITEM 2. Adopt the following **new** chapters:

CHAPTER 1 ORGANIZATION

495—1.1(97B) Organization. The agency shall administer the retirement system created by Iowa Code chapter 97B as amended by 2003 Iowa Acts, House File 534, sections 170 to 181. Specific powers and duties of the agency, CEO, board, committee, and agency staff are set forth in Iowa Code chapter 97B as amended by 2003 Iowa Acts, House File 534, and these administrative rules.

Operational units within the agency shall develop and administer policies and procedures governing retirement system programs, including accounting functions for the collection of funds from employers and employee members; disbursement of retirement benefits, death benefits, lump sum payments, and disability retirement benefits; training to employers and subsequent review of employer records for compliance with Iowa Code chapter 97B, rules and policies; legal counsel to IPERS staff and members regarding eligibility for disbursement of benefits and other legal matters; preparation and release of informational newsletters and the annual report; and investment of funds contributed to the retirement system by employers and employee members. The retirement system is also the state administrator to the federal Social Security Administration.

495—1.2(97B) Definitions. Unless otherwise prescribed by federal or state regulations, the terms used in this chapter shall have the following meanings:

“Agency” means the Iowa Public Employees’ Retirement System (IPERS) created as an independent agency within the executive branch of state government to administer Iowa Code chapter 97B.

“Board” means the IPERS’ investment board as created in Iowa Code section 97B.8A.

“Chief benefits officer” means the person employed by IPERS’ chief executive officer, following consultation with the committee, to administer benefits programs and other member services provided under the retirement system.

“Chief executive officer” means the administrator of the agency appointed pursuant to Iowa Code section 97B.3 and whose term shall be determined pursuant to 2003 Iowa Acts, Senate File 102.

“Chief investment officer” means the person employed by IPERS’ chief executive officer, following consultation with the board, to administer the investment program of the retirement system.

“Committee” means the benefits advisory committee created pursuant to Iowa Code section 97B.8B.

“Internal Revenue Code” means the Internal Revenue Code as defined in Iowa Code section 422.3.

“IPERS” means the agency or the system as the context requires.

“System” means the retirement plan created pursuant to Iowa Code chapter 97B.

495—1.3(97B) Administration. The chief executive officer, through the chief investment officer and the chief benefits officer, shall administer Iowa Code chapters 97, 97B, and 97C. The chief executive officer shall execute contracts on behalf of IPERS and shall, after consultation with the board and other agency staff, establish and administer the budget, funding policy and such other duties as are required or permitted in Iowa Code section 97B.4. The chief executive officer may make expenditures, reports, and investigations as necessary to carry out the powers and duties created in Iowa Code chapter 97B and may obtain, as necessary, the specialized services of individuals or organizations on a contract-for-service basis. The chief executive officer shall be the agency’s statutory designee with respect to rule-making power.

1.3(1) Location. IPERS’ headquarters is located at 7401 Register Drive, Des Moines, Iowa. General correspondence, inquiries, requests for information or assistance, complaints, or petitions shall be addressed to: Chief Executive Officer, Iowa Public Employees’ Retirement System, P.O. Box 9117, Des Moines, Iowa 50306-9117.

1.3(2) Business hours. Business hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding officially designated holidays.

These rules are intended to implement Iowa Code chapter 97B as amended by 2003 Iowa Acts, House File 534, sections 170 to 181.

CHAPTER 2 INVESTMENT BOARD

495—2.1(97B) Investment board. The principal place of business of the board is IPERS’ headquarters, 7401 Register Drive, Des Moines, Iowa.

1. Effective July 1, 2002, the board shall be the trustee of the retirement fund. The board shall meet annually, and may meet more often, to review its investment policies.

2. At the first meeting in each fiscal year, the voting members shall elect a chair and vice chair. Future meeting dates for the year shall also be decided at the first meeting. Advance notice of time, date, tentative agenda, and place of each meeting shall be given in compliance with Iowa Code chapter 21. All meetings of the board are open to the public and shall be held in accordance with Robert’s Rules of Order, Revised Edition.

3. Parties wishing to present items for the agenda of the next meeting shall file a written request with the board chair at least five business days prior to the meeting. The board may take up matters not included on its agenda.

4. Four members eligible to vote shall constitute a quorum. A simple majority vote of the full voting membership shall be the vote of the board.

5. Members of the board shall file financial statements pursuant to Iowa Code section 68B.35(2)“e.”

6. In the event that it should become necessary to fill the chief investment officer position, the board may consult with, and make hiring recommendations to, the chief executive officer consistent with provisions in Iowa Code sections 19A.2A and 19A.9(3).

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7. The board shall set the salary of the CEO pursuant to 2003 Iowa Acts, Senate File 102, section 1.

495—2.2(97B) Calculation of investment management expenses limit. For purposes of determining that IPERS' investment management expenses do not exceed four-tenths of one percent (0.40%) of the market value of the retirement fund, the amount appropriated under Iowa Code section 97B.7(3)“d,” market value and investment management expenses shall be determined as follows:

2.2(1) Determination of market value. The calculation of market value as of any single date shall be performed by IPERS' investment staff using generally accepted accounting principles. For purposes of this subrule, market value shall be defined as the average of the quarterly ending market values for the fiscal year.

2.2(2) Investment management expenses shall include:

a. Fees paid to advisory, management and consulting firms for the purpose of planning and executing the investment of the assets of the retirement fund;

b. Fees and costs for the safekeeping of fund assets;

c. Costs of monitoring:

(1) The performance and compliance of retirement fund investments, and

(2) The performance and compliance of advisory, management or consulting firms hired for the purpose of planning and executing the investment of the assets of the retirement fund;

d. Costs of board meetings;

e. Costs of board members' travel and education;

f. Costs of IPERS' investment staff salaries, benefits, travel and education;

g. Costs of any additional external legal, accounting or professional services authorized by the chief investment officer for the purpose of carrying out the requirements of Iowa Code sections 97B.7 and 97B.7A; and

h. Such other fees or costs as may be determined by the chief investment officer to be appropriately included by industry practice in the calculation of investment expenses.

2.2(3) Investment management expenses shall not include:

a. Fees or costs that are capitalized in the cost of an investment including, but not limited to, fees paid to general partners in limited partnership investments, acquisition and closing fees for real estate investments, and brokerage commissions paid in purchasing and selling investment assets.

b. Fees or costs that are netted against the income of commingled investment funds.

c. Attorney fees, court costs, judgments, settlements, fines, penalties and similar costs of litigation or regulatory action relating to the investment of the assets of the retirement fund.

d. Such other fees or costs as may be determined by the chief investment officer to be appropriately excluded by industry practice from the calculation of investment expenses.

These rules are intended to implement Iowa Code chapter 97B as amended by 2003 Iowa Acts, House File 534, sections 170 to 181.

CHAPTER 3

BENEFITS ADVISORY COMMITTEE

495—3.1(97B) Benefits advisory committee.

3.1(1) Scope. These rules shall govern the conduct of business by the IPERS' benefits advisory committee (BAC) pursuant to Iowa Code section 97B.8B.

3.1(2) Purpose. The BAC shall be an advisory committee that serves as a channel for employers and employees to help formulate policies and recommendations regarding the provision of benefits and services to members of the system.

495—3.2(97B) Membership organizations.

3.2(1) The BAC shall be composed of representatives appointed by the following: the Iowa State Education Association, the Iowa Association of Community College Trustees, the School Administrators of Iowa, the Iowa Association of School Boards, the Retired School Personnel Association, the State Police Officers' Council, the state of Iowa (which shall be represented by the director of the department of administrative services), the IPERS' Improvement Association, the American Federation of State, County, and Municipal Employees, the Iowa State Sheriffs' and Deputies' Association, the Iowa State Association of Counties, the Iowa League of Cities, and the Iowa Association of Chiefs of Police and Peace Officers, Inc.

In addition, there shall be a citizen representative who has substantial pension benefits experience and who is not a member of IPERS.

3.2(2) Appointment of BAC representatives. Each membership organization shall appoint a representative to serve on the BAC. The citizen representative shall be elected by the eight voting representatives who serve under subrules 3.4(1) and 3.4(2). All BAC representatives shall provide in writing to the chairperson the name, address, and telephone number of and other information about the representative as required by the chairperson. The BAC shall not entertain petitions disputing a membership organization's choice of its representative.

3.2(3) Attendance. Any representative shall be deemed to have submitted a resignation from participation in the BAC if either of the following events occurs:

a. The representative does not attend three or more consecutive regularly scheduled meetings.

b. The representative attends fewer than one-half of the regularly scheduled meetings of the BAC each fiscal year.

This provision applies only to a period beginning on or after the date when the person assumes the position of representative. In the event that a representative is deemed to have resigned under this provision, the chairperson shall immediately notify the representative's organization and require the appointment of a different representative within 30 days.

If a representative is unable to attend a meeting, an alternate may attend the meeting, but shall not be able to cast a vote. Attendance by an alternate shall not relieve the regular representative of the responsibility of attendance at regularly scheduled meetings.

495—3.3(97B) Replacement or expansion of organizations. An organization must be a unit of the executive branch or a formally organized corporation or association representing a viable and identifiable group of covered employers or covered employees as determined by the BAC in its sole discretion.

An organization that wishes to replace an existing organization may petition the BAC at any time to do so. If the BAC determines that there are two organizations that meet the foregoing requirements and purport to represent the same group of covered employers or employees, the committee seat shall be awarded to the organization representing the largest number of employer or employee constituents, as applicable.

An organization that would qualify as an organization under this rule may also, in lieu of replacing an existing orga-

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nization, petition the BAC to increase the number of organizations listed in subrule 3.2(1) to include that organization.

Beginning March 2005 and every three years thereafter, the BAC will review new applications for replacement or expansion of organizations. The applications will be reviewed by a subcommittee that will offer recommendations to the full BAC for consideration at the March meeting before the end of each three-year period.

This rule shall not be construed to affect the BAC positions reserved for the director of the department of administrative services or the position reserved for a citizen who has substantial pension benefits experience and who is not a member of IPERS.

495—3.4(97B) Voting representatives. The BAC shall have nine voting representatives. Four shall represent employers, four shall represent active and retired members of the system, and one shall be a citizen who has substantial pension benefits experience and who is not a member of IPERS.

3.4(1) Employer voting representatives. One representative shall be the director of the department of administrative services. The remaining employer representatives shall be elected by the full membership of the BAC as follows: one shall be a representative of an employer group representing cities, one shall be a representative of an employer group representing counties, and one shall be a representative of an employer group representing local school districts.

3.4(2) Employee voting representatives. One voting representative shall be elected by the full membership of the BAC from the membership organizations that represent teachers. The other three voting representatives of active and retired members shall be elected by the remaining BAC representatives not automatically selected by virtue of legally mandated seats or designated as voting members by the full membership of the BAC under subrule 3.4(1) or this subrule. No more than one of these voting members shall be the representative of an employee group that solely represents the public safety protection classes.

3.4(3) Voting rights. No membership organization shall be permitted to designate a substitute voting representative to cast the vote of a membership organization at a meeting in the event that the named representative cannot attend the meeting. No membership organization shall have more than one vote on a matter brought before the BAC.

3.4(4) Terms of voting representatives. The term of each voting representative shall be three years, beginning and ending as provided in Iowa Code section 97B.8B, except as otherwise indicated in this subrule.

The terms of the voting representatives shall be staggered, so as to maintain an acceptable level of continuity and experience on the BAC. Accordingly, the terms of voting representatives chosen to begin July 1, 2002, shall be set as follows: The voting representatives shall draw lots to determine the length of their terms of office. Two shall serve for one year, three shall serve for two years, and two shall serve for three years. This formula recognizes that two voting representatives, the director of the department of administrative services and the citizen representative, are required by law to be voting members. The citizen representative shall serve for three years. At the expiration of the one-, two- or three-year term, the voting representative elected to fill that position shall serve for a three-year term.

If a voting representative resigns or is replaced by the appointing organization, the appointing organization shall appoint a successor who shall be a voting member for the remainder of the term in question.

If an organization that is not currently a membership organization successfully petitions to replace a membership organization that is represented by a voting representative, the representative of the replacement membership organization shall complete the remainder of the term of the voting representative in question.

3.4(5) Quorum and voting requirements and procedures. A majority of the voting representatives of the BAC constitutes a quorum.

a. Voting requirements. A quorum of the BAC must be present at the time any vote is taken. In order for a motion to pass or for the BAC to conduct business, a majority of the full voting membership must vote in favor of the motion or other business matter.

b. Voting procedures. The chairperson shall rule as to whether the vote will be by voice or roll call. A roll-call vote shall be taken anytime a voice vote is not unanimous. Minutes of the BAC shall indicate the vote of each voting member if a roll-call vote is taken.

3.4(6) Officers and election.

a. Officers. The officers of the BAC are the chairperson and vice chairperson and shall be elected by a vote of the full membership of the BAC.

b. Elections. Election of officers shall take place at the first BAC meeting held on or after July 1, 2002, and at the beginning of each fiscal year thereafter. If an officer does not serve out the elected term, a special election shall be held at the first meeting after notice is provided to the BAC to elect a representative to serve out the remainder of the term.

495—3.5 Reserved.

495—3.6(97B) Duties. The BAC shall review and advise on the following matters insofar as they impact benefits and services provided to members and member employers under Iowa Code chapter 97B: overall plan design, benefits policy and goals, budget, benchmarking and quality assessment efforts, research and strategic planning. Through its voting representatives, the BAC shall make recommendations to the system, the governor and the general assembly about programs, benefits and services. The BAC shall also participate in annual performance evaluations of the chief benefits officer and, when that position becomes vacant, assist the chief executive officer in the process of defining and selecting a replacement. In addition, the BAC shall recommend to the governor at least two nominees for each vacant position on the investment board reserved for active or retired members of the system. The chairperson of the BAC shall solicit nominations for such vacancies from the entire BAC membership and, through a meeting of the BAC, select the names to be forwarded to the governor.

At least every two years, the BAC shall review the benefits and services provided to members; and the voting representatives shall make recommendations to the system, the governor, and the general assembly concerning the benefits and services provided to members and the system's benefits policies and benefits goals. All of the membership of the BAC, including nonvoting representatives, may have input into formulating such recommendations.

495—3.7(97B) Committee meetings. The BAC shall meet at least quarterly, or at the call of the chairperson, or upon the written request by the chief executive officer, or designee, or upon written request of a majority of the BAC representatives. The chairperson shall establish the dates of all regularly scheduled meetings and provide, with reasonable effort, at least one month's notice of those meeting dates, locations, and agenda. Meetings, unless otherwise specified in the

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agenda, will generally be held at IPERS' headquarters, 7401 Register Drive, Des Moines, Iowa.

3.7(1) Notice of meetings and agenda.

a. Form of notice. Notice of meetings is given by the posting and distributing of the agenda. The agenda lists the time, date, place, and topics to be discussed at the meeting.

b. Posting of agenda. The agenda for each meeting will be posted at IPERS' headquarters.

c. Distribution of agenda. An agenda shall be provided to each BAC representative and to anyone who files a request with the chairperson. The request should state whether the agenda for a particular meeting is desired or whether the agendas for all meetings are desired.

d. Amendments to agenda. After an agenda has been posted and distributed, any amendments to the agenda will be posted, but not distributed. The amended agenda will be posted at least 24 hours prior to the meeting unless, for good cause, notice is impossible or impractical, in which case as much notice as is reasonably possible will be given.

e. Supporting material. Written materials provided to the BAC with the agenda may be examined and copied. Copies of the materials may be distributed at the discretion of the chairperson to persons requesting the materials. The chairperson may require a fee to cover the reasonable cost to the agency to provide the copies.

3.7(2) Recordings, transcripts and minutes of meetings.

a. Recordings. The chairperson shall record by mechanized means each meeting and shall retain the recording for at least one year. Recordings of closed sessions shall be sealed and retained at least one year.

b. Transcripts. Transcripts of meetings will not routinely be prepared. The chairperson will have transcripts prepared upon receipt of a request for a transcript and payment of a fee to cover its cost.

c. Minutes. The chairperson shall record minutes of each meeting. Minutes shall be reviewed, approved, and maintained by the BAC. The chairperson shall sign the approved minutes.

3.7(3) Attendance and participation by the public.

a. Attendance. All meetings of the BAC are open to the public and shall be held in accordance with Robert's Rules of Order, Revised Edition. The BAC may exclude the public from portions of the meeting in accordance with Iowa Code section 21.5.

b. Participation.

(1) Items on agenda. Persons who wish to address the BAC on a matter on the agenda should notify the chairperson in writing at least five days before the meeting. Presentations to the BAC may be made at the discretion of the chairperson.

(2) Items not on agenda. Iowa Code section 21.4 requires the BAC to give notice of its proposed agenda. Therefore, the BAC discourages persons from raising matters not on the agenda. Persons who wish to address the BAC on a matter not on the agenda should file a request with the chairperson to place the matter on the agenda of a subsequent meeting.

c. Coverage by press. Cameras and recording devices may be used during meetings provided they do not interfere with the orderly conduct of the meeting. The chairperson may order that the use of these devices be discontinued if they cause interference and may exclude those persons who fail to comply with that order.

495—3.8(97B) Expenses. Expenses of BAC representatives shall be reimbursed in accordance with Iowa Code section 97B.8B.

These rules are intended to implement Iowa Code chapter 97B as amended by 2003 Iowa Acts, House File 534, sections 170 to 181.

CHAPTERS 4 to 16

Reserved

CHAPTER 17

PUBLIC RECORDS AND FAIR
INFORMATION PRACTICES

495—17.1(17A,22) Definitions. As used in this chapter:

“Confidential record” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information as described in Iowa Code section 97B.17, and records, or information contained in records, that are specified in Iowa Code section 22.7, or by other provision of law.

“Custodian” means the CEO or designee.

“Open record” means a record other than a confidential record.

“Personally identifiable information” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system under the jurisdiction of the agency.

“Record” means all or part of a “public record” as defined in Iowa Code section 22.1 or 97B.17 which is owned by or in the physical possession of the agency.

“Record system” means any group of records under the jurisdiction of the agency from which a confidential record or information may be retrieved.

495—17.2(17A,22) Statement of policy, purpose and scope. The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This chapter implements Iowa Code section 22.11 by establishing rules, policies, and procedures for the maintenance of employee, member, and other records in the possession of and under the jurisdiction of the agency.

495—17.3(17A,22) Requests for access to records.

17.3(1) Location of record. A request for access to a record under the jurisdiction of the agency shall be directed to the CEO or designee, Iowa Public Employees' Retirement System (IPERS), 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117.

17.3(2) Office hours. Records shall be made available during all customary office hours which are from 8 a.m. to 4:30 p.m., excluding officially designated holidays.

17.3(3) Request for access. Requests for access to open records may be made in writing, by telephone, electronically or in person. All requests shall include the name, address, telephone number, and the E-mail address (if available), of the person requesting the information. All requests for information regarding member accounts must contain the member's social security number. Requests shall identify the particular records sought by name or other personal identifier and shall include a description in order to facilitate the location of the record. A person shall not be required to give a reason for requesting an open record. The request shall indicate the maximum search fee the requester is prepared to pay. If the maximum amount is reached before the requested records have been located and copied, the requester shall be notified and asked for further directions.

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17.3(4) Response to requests. The custodian is authorized to grant or deny access to agency records according to the provisions of this chapter. The decision to grant or deny access may be delegated to one or more designated employees.

Access to an open record shall be provided promptly upon request, unless the size or nature of the request makes prompt access impractical. However, access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall inform the requester of the reason for the delay and an estimate of the length of that delay and, upon request, shall provide a written reply.

The custodian may deny access to the record or information in the record by members of the public only on the grounds that a denial is warranted under Iowa Code section 22.8(4) or 22.10(4), or that it is a confidential record or information, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record or information is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 495—17.4(97B) and other applicable provisions of law.

17.3(5) Security of record. Individuals will not be given access to the area where the records are kept. All examination and copying of records shall be done under supervision. Records shall be protected from damage and disorganization.

17.3(6) Copying. A reasonable number of copies may be made at IPERS. If the number of copies is prohibitive or the copying equipment is not available, IPERS may arrange to have copies made elsewhere subject to costs.

17.3(7) Fees.

a. When charged. The agency is authorized to charge fees in connection with the retrieval, restoration, supervision, compiling and copying of records in accordance with Iowa Code section 22.3. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published records and for copies of records supplied by the agency shall be posted in the agency. Copies of records may be made by or for members of the public at cost, as determined by and posted in the agency. When the mailing of copies of records is requested, the actual costs of mailing may also be charged to the requester.

c. Search and supervisory fee. A fee may be charged for actual expenses in retrieval, restoration, compiling and supervising the examination and copying of requested records. The fee shall be based on the hourly rate of pay of an agency employee who ordinarily would be appropriate and suitable to perform this function and shall be posted in the agency. No fee shall be charged if the records are not made available for inspection. The requester shall be given advance notice of the hourly rate that will be charged in connection with the retrieval, restoration, supervision, compilation and copying of records.

d. Computer-stored information. A fee, as described in the paragraph above, may be charged for the actual expenses related to the retrieval, restoration and copying of information stored in electronic records. IPERS shall not create custom software to elicit information that is not readily available or accessible on the electronic systems as a normal business function.

e. Advance payments.

(1) When the estimated fee chargeable under this subrule exceeds \$25, the requester shall be required to make an advance payment of the estimated fee. Upon completion of the

request for records, the actual fee shall be calculated and the difference refunded or collected.

(2) When a requester has previously failed to pay a fee charged under this subrule, full advance payment of future estimated fees of any amount may be required before processing a new or pending request for access to records from that requester.

495—17.4(17A,22) Access to confidential records. Under Iowa Code sections 22.7, 97B.17 or other applicable provisions of law, the custodian may disclose certain confidential records to members of the public. Other provisions of law may authorize or require the custodian to release specified confidential records or information under certain circumstances or to particular persons. The following procedures apply to requests for the custodian to permit the examination or copying of a confidential record and are in addition to those specified for requests for access to records in rule 17.3(17A,22).

17.4(1) Proof of identity. A person requesting access to a confidential record shall be required to provide proof of identity satisfactory to the custodian.

17.4(2) Requests. A request for access to a confidential record shall be in a form acceptable to the agency. A person requesting access to a confidential record shall be required to sign a statement enumerating the specific grounds alleged to justify access and provide any proof necessary to establish relevant facts.

17.4(3) Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases that record, the custodian may make reasonable efforts to notify any person who is a subject of that record, is identified in that record, and whose address, telephone number, or other personal identifier is contained in that record. The custodian shall give the subject of that confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8 and indicate to the subject of that record the specified period of time during which disclosure will be delayed for that purpose.

17.4(4) Request denied. When the custodian denies a request for access to a confidential record, in whole or in part, the custodian shall notify the requester in writing. The denial shall be signed by the custodian of the record and shall include:

- a. The name and title of the person responsible for the denial; and
- b. A citation to the statute or other provision of law which prohibits disclosure of the record; or
- c. A citation to the statute vesting discretion in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to the requester.

17.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

495—17.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as confidential and withhold it from examination only to the extent that the custodian is authorized to refuse to disclose the record to members of the public by Iowa Code section 22.7 or 97B.17, another applicable provision of law, or in response to a court order.

17.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of all

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or a part of a record under the jurisdiction of the agency to members of the public and who asserts that Iowa Code section 22.7 or 97B.17, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record, may file a request, as provided for in this rule, for its treatment as a confidential record and to withhold it from public inspection.

17.5(2) Request. A request for the treatment of a record as a confidential record shall be in writing and shall be filed with the custodian. The request shall include an enumeration of the specific reasons justifying confidential record treatment for all or part of that record, the specific provisions of law that authorize confidential record treatment in this instance, and the name, mailing address, telephone number and, if available, the E-mail address of the person authorized to respond to any action concerning the request. If the information is regarding an IPERS member, the social security number of the member must be included. The person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of the record as a confidential record and to provide any proof necessary to establish relevant facts. The person filing a request shall, if possible, accompany the request with a redacted copy of the record in question for which confidential record treatment has been requested. If the original record is submitted at the same time the request is filed, the person shall indicate conspicuously on the original record which portions of it are requested to be confidential. Requests for treatment of all or portions of a record as confidential for a limited time period shall also specify the precise period of time for which confidential record treatment is requested.

17.5(3) Failure to request. Failure of a person to request confidential record treatment for a record or confidential information contained in a record shall not preclude the custodian from treating it as a confidential record or the confidential information contained in that record as permitted under Iowa Code section 22.7 or 97B.17. However, if a person who has submitted information does not request confidential record treatment under the provisions of Iowa Code sections 22.7(3) (trade secrets), 22.7(6) (advantage to competitors), and 22.7(18) (communications not required by law, rule, procedure or contract), the custodian of records containing that information may, but is not required to, proceed as if that person has no objection to its disclosure to members of the public.

17.5(4) Timing of decision. A decision by the agency with respect to the disclosure of all or part of a record under its jurisdiction to members of the public may be made when a request for its treatment as a confidential record is filed or when a request is received for access to the record by a member of the public.

17.5(5) Request granted or deferred. If a request for a confidential record or information is granted, or if action on a request is deferred, a copy of the record from which the material in question has been deleted and a copy of the decision to grant the request or to defer action on the request will be placed in the original file, and will be made available for public inspection. If a request is subsequently received for access to the original record, reasonable and timely efforts will be made to notify any person who has filed a request for its treatment as a confidential record.

17.5(6) Request denied and opportunity to seek injunction. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of the reasons for

that determination. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

495—17.6(17A,22) Procedure by which a person who is the subject of a record may have additions, dissents, or objections entered into certain records. Except as otherwise provided by law, the subject of a record may file a request with the custodian to review and to have the right to have written additions, dissents, or objections entered into a record under the jurisdiction of the agency. However, this does not authorize a person who is a subject of a record to alter the original copy of the record or to expand the official record of an agency proceeding. The subject shall send the request to review a record or the written statement of additions, dissents or objections to the agency. Additions, dissents, or objections must be dated and signed by the subject, and shall include the current mailing address, telephone number and, if available, the E-mail address of the subject or the subject's representative. The subject's social security number must also be included on the addition.

495—17.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, the subject of a confidential record under the jurisdiction of the agency may consent to disclosure to a third party of that portion of the record concerning the subject except as provided in subrule 17.12(1). The consent must be in writing and must identify the particular record or records that may be disclosed, the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record or information may be disclosed. The subject and, where applicable, the person to whom the record is to be disclosed, must provide proof of identity. Appearance of legal counsel, or a duly appointed representative on behalf of a subject of a confidential record, is deemed to constitute consent for the agency to disclose records about that person to the person's representative.

495—17.8(17A,22) Notice to suppliers of information. When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided the information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

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495—17.9(17A,22) Disclosures without the consent of the subject.

17.9(1) Open records shall be routinely disclosed without the consent of the subject.

17.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 495—17.10(97B) or in the notice for a particular record system.

b. To a recipient who has provided advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any government jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the authorized representative of the government agency or instrumentality has submitted a written request to the custodian specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual following a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known mailing address of the subject.

e. To the legislative services agency under 2003 Iowa Acts, House File 636.

f. In the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

495—17.10(17A,22) Routine use.

17.10(1) Defined. "Routine use" means the disclosure of a record, without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required or permitted to be made by statute other than the public records law, Iowa Code chapter 22.

17.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to officers, employees and agents of the agency who have a need for the record in the performance of duties. The CEO or designee shall resolve disputes concerning what constitutes legitimate need to use confidential or exempt records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of an agency.

d. Transfers of information within an agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal, state, or other governmental entities for audit purposes or for purposes of determining whether an agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

g. Disclosure to officers, employees and agents of the agency who need to use the record to determine the named beneficiary when a wage earner or retiree dies; to maintain a record of wages reported and quarters worked for computation of benefits; to track benefits received; to recompute and

adjust benefits; to update information for electronic deposit of benefits; to audit payroll reports; and to verify quarterly update of wages paid.

495—17.11(17A,22) Consensual disclosure of confidential records.

17.11(1) Consent to disclosure by a subject individual. The subject may consent in writing to disclosure of confidential records as provided in rule 495—17.7(97B).

17.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves a record under the jurisdiction of the agency may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter. The public official shall be required to treat the information received as confidential.

17.11(3) Obtaining information from a third party. The agency may be required to obtain information to coordinate benefits, verify applicant and employee information or to provide other services. Requests to third parties for this information may involve the release of confidential identifying information about individuals contained in records under the jurisdiction of the agency. Such requests are within the meaning of routine use as defined in rule 495—17.10(97B) and shall not require authorization from the subject of the record.

495—17.12(17A,22) Release to subject.

17.12(1) Records shall be released to the subject of a confidential record upon a written request from the subject. The agency need not release the following records or information to the requester:

a. The identity of a person providing information about the requester when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).

b. Records that are the work products of an attorney or are otherwise privileged.

c. Peace officers' criminal investigative reports except as required by the Iowa Code. See Iowa Code section 22.7(5).

d. As otherwise authorized by law or covered as an investigative request required by the system.

17.12(2) Where a record has multiple persons with interest in the confidentiality of the record, reasonable steps shall be taken to protect confidential information relating to other persons in the record.

495—17.13(17A,22) Availability of records.

17.13(1) Open records. Records under the jurisdiction of the agency are open for public inspection and copying unless otherwise provided by these rules.

17.13(2) Confidential records. The following records under the jurisdiction of the agency may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids. See Iowa Code section 72.3.

b. Tax records made available to the agency.

c. Records which are exempt from disclosure under Iowa Code sections 22.7 and 97B.17, including, but not limited to:

(1) Communications not required by rule, law, procedure or contract to the extent that the agency reasonably believes that such communications would not be made if the supplier knew the information would be made available for general public examination. These records are confidential under Iowa Code section 22.7(18).

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(2) Data processing software, as defined in Iowa Code section 22.3A, which is developed by a governmental body.

(3) Log-on identification passwords, Internet protocol addresses, private keys, or other records containing information which might lead to disclosure of private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D.

(4) Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.

d. Minutes of closed meetings of a government body under Iowa Code section 21.5(4).

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“e.”

f. Those portions of agency manuals, examination materials, instructions or other statements issued which set forth criteria or guidelines to be used in auditing, in making inspections, in settling commercial disputes or negotiating commercial contract arrangements, or in the selection or handling of cases, such as operational tactics on allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law;

or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency.

g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4) and 622.10, Iowa R.C.P. 1.503, Fed. R.Civ.P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code section 622.10, the rules of evidence, the Code of Professional Responsibility, and case law.

h. Any other records made confidential by law.

17.13(3) Authority to release confidential records. The agency, under certain circumstances, may disclose some information or confidential records which otherwise are exempt from disclosure under Iowa Code sections 22.7 and 97B.17, or other law. Any person may request permission to inspect particular records withheld from inspection as confidential records. If it is initially determined that records will be released, reasonable efforts will be made, where appropriate, to notify interested persons, and the records may be withheld from inspection for up to ten days to allow interested persons to seek injunctive relief.

495—17.14(17A,22) Personally identifiable information.

This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by personal identifier in record systems defined in rule 495—17.1(97B). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information, and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Record systems under the jurisdiction of the agency that are retrievable through the use of personal identifiers are described as follows:

17.14(1) IPERS personnel files and records. Personnel files of IPERS employees are maintained and kept under the jurisdiction of the agency and contain personal, private, and otherwise confidential records under Iowa Code section

22.7(11). It is unlikely that the personal and private information in these records can be separated from otherwise releasable information without identifying the subject or the employee's family. These records contain names, social security numbers and other identifying numbers, and are collected in the form of paper, microfilm, tape, and computer records. Data processing systems permit the comparison of personally identifiable information in one record system with that in another system.

17.14(2) Iowa public employees' retirement system. The retirement system possesses records that concern individual public employees who are covered by IPERS and their families. Records are collected in accordance with Iowa Code chapter 97B and are confidential records in part under Iowa Code sections 22.7 and 97B.17. These records contain names, addresses, social security numbers, and other identifying numbers, and are collected in the form of paper, microfilm, tape, and computer records. Data processing systems permit the comparison of personally identifiable information in one record system with that in another system.

17.14(3) Vendor contracts. These are records pertaining to facilities management, training, investment management, and other services. These records are collected in accordance with Iowa Code chapter 97B and are confidential records in part under Iowa Code section 22.7. These records contain names, addresses, social security numbers, and other identifying numbers, and are collected in the form of paper, microfilm, tape, and computer records. Data processing systems permit the comparison of personally identifiable information in one record system with that in another system.

495—17.15(17A,22) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the agency other than those record systems retrieved by personally identifiable information as defined in rule 495—17.1(97B). These records are routinely available to the public subject to costs. However, these records may contain confidential information. In addition, the records listed in subrules 17.15(1) to 17.15(4), 17.15(6), and 17.15(9) may contain information about individuals. All records may be stored on paper, microfilm, tape or in automated data processing systems unless otherwise noted.

17.15(1) Rule-making records. Rule-making records may identify individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection. This information is not retrieved by individual identifier.

17.15(2) Board and committee records. Agendas, minutes, and materials presented to the board and committee within the agency are available from the agency except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. These records may identify individuals who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier.

17.15(3) Publications. News releases, annual reports, final project reports, newsletters, and brochures describing various programs are available from the agency. These publications may contain information about individuals, including staff or members of the board or committee. This information is not retrieved by individual identifier.

17.15(4) Statistical reports. Periodic reports of activity for various department programs are available from the de-

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partment. This information is not retrieved by individual identifier.

17.15(5) Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 495—17.5(97B) or subrule 17.13(2). These records, collected under the authority of Iowa Code chapters 97B and 97C, may contain confidential information about individuals.

17.15(6) Published materials. The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright laws. This information is not retrieved by individual identifier.

17.15(7) Policy manuals. The agency's manuals containing the policies and procedures for programs administered by the agency are available at IPERS' headquarters. This information is not retrieved by individual identifier.

17.15(8) Administrative records. These are records related to the budgets of the agency, the requisition of equipment and supplies, the payment of claims, and other accounting functions as well as records kept by the investments section, including information on investment policies and portfolios. Some investment information is partially confidential under Iowa Code sections 22.7 and 97B.17.

17.15(9) All other records not exempted from disclosure by law.

495—17.16(17A,22) Comparison of data processing systems. To the extent required by law, all data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

495—17.17(17A,22) Applicability. This chapter does not:

1. Make available to the general public records which contain information about individuals by that person's name or other personal identifier.

2. Make records available to the general public which would otherwise not be available under the public records law, Iowa Code chapter 22 and Iowa Code section 97B.17.

3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are under the jurisdiction of another agency.

4. Apply to grantees, including local governments or their subdivisions, administering state-funded programs unless otherwise provided by law or agreement.

5. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of those records to the general public or to any individual or party to litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

6. Require the agency to create, compare or procure a record solely for the purpose of making it available.

These rules are intended to implement Iowa Code chapter 97B as amended by 2003 Iowa Acts, House File 534, sections 170 to 181.

CHAPTER 18
Reserved

CHAPTER 19
DECLARATORY ORDERS

495—19.1(17A) Petition for declaratory order. Any person may file a petition with the agency for a declaratory order regarding the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency. Such petitions shall be addressed to the CEO, IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. A petition is deemed filed when it is received by the agency.

The agency shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM (IPERS)

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	PETITION FOR DECLARATORY ORDER
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The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.

2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.

3. The questions petitioner wants answered, stated clearly and concisely.

4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.

5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.

6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.

8. Any request by petitioner for a meeting pursuant to 19.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

495—19.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the agency shall give notice of the petition to all persons not served by the petitioner pursuant to rule 19.7(17A) to whom notice is required by any provision of law. Notice may also be given to any other person.

495—19.3(17A) Intervention.

19.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

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19.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the agency.

19.3(3) A petition for intervention shall be filed at IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. Such a petition is deemed filed when it is received by IPERS.

The agency will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM (IPERS)

Petition by (Name of Original Petitioner), for a Declaratory Order on (Cite provisions of law in original petition).	PETITION FOR INTERVENTION
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The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented in the original petition for declaratory order, and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

495—19.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The agency may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

495—19.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the CEO, or designee, IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117.

495—19.6(17A) Service and filing of petitions and other papers.

19.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified

in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

19.6(2) When filing required. Petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the CEO, or designee, IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the agency.

19.6(3) Method of service. Method of service, time of filing, and proof of mailing shall be as provided by uniform rule on contested cases 495—26.13(17A).

495—19.7(17A) Informal meeting. The agency may schedule a brief and informal meeting between the original petitioner, all intervenors, and the agency, a member of the agency, or a member of the staff of the agency to discuss the questions raised. The agency may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the agency by any person.

495—19.8(17A) Action on petition.

19.8(1) Within 30 days after receipt of a petition for a declaratory order, the CEO or designee shall take action on the petition pursuant to Iowa Code section 17A.9(5).

19.8(2) The date of issuance of an order or of a refusal to issue an order shall be the date of mailing of a decision or order, or the date of delivery if service is by other means, unless another date is specified in the order.

495—19.9(17A) Refusal to issue order.

19.9(1) The agency shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1). The agency may refuse to issue a declaratory order on some or all questions raised for the following reasons:

- a. The petition does not substantially comply with the required form.
- b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the agency to issue an order.
- c. The agency does not have jurisdiction over the questions presented in the petition.
- d. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
- e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
- i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose

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position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the agency to determine whether any of the conditions under Iowa Code section 17A.19(8), incorporated by this reference, have been met.

k. The agency will not issue declaratory orders on the following:

- (1) The present value of IPERS retirement monthly benefits;
- (2) Actuarial assumptions used or proposed to be used by the agency;
- (3) The impact of proposed legislation;
- (4) Issues which require the disclosure of confidential information; and
- (5) Items listed in rule 495—26.13(17A,97B).

19.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

19.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

495—19.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance; the name of petitioner and all intervenors; the specific statutes, rules, policies, decisions, or orders involved; the particular facts upon which it is based; and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

495—19.11(17A) Copies of orders. Copies of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

495—19.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the agency, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the agency. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapters 17A and 97B as amended by 2003 Iowa Acts, House File 534, sections 170 to 181.

CHAPTERS 20 and 21
Reserved

CHAPTER 22
FEDERAL SOCIAL SECURITY

495—22.1(97C) General. In order to extend to the employees of the state of Iowa and its political subdivisions, agencies and instrumentalities the basic protections accorded by the old-age and survivors system embodied in Title II of the federal Social Security Act, on July 1, 1953, the state of Iowa signed a Section 218 Agreement with the Social Security Administration. That Section 218 Agreement, as implemented in Iowa Code chapter 97C, provides Social Security mandates and federal Social Security coverage for most Iowa public employees.

495—22.2(97C) Pre-January 1, 1987, duties. Prior to January 1, 1987, the agency had substantial responsibilities for administering withholding, depositing and reporting require-

ments for Social Security and Medicare taxes, including audit, tax collection, and dispute resolution responsibilities. Effective January 1, 1987, those responsibilities were mostly transferred to the federal Internal Revenue Service. Accordingly, the agency will assist employers with respect to wage reports, tax collections and adjustments only for the period prior to January 1, 1987.

495—22.3(97C) Post-January 1, 1987, duties.

22.3(1) The agency's responsibilities under the Section 218 Agreement are to administer and maintain the Section 218 Agreement by:

a. Maintaining physical custody of the master Section 218 Agreement, modifications, dissolutions, consolidations and intrastate and interstate coverage agreements.

b. Preparing Section 218 Agreement modifications to include additional covered employers, following the employer's submission of an IPERS Status Report form indicating the employer should be covered under the Iowa Public Employees' Retirement System.

c. Preparing Section 218 Agreement modifications to include additional coverage groups of employees when appropriate.

d. Preparing Section 218 Agreement modifications to remove covered employers, coverage groups, and to correct errors in prior modifications.

e. Providing advice on Section 218 Agreement optional exclusions applicable to Iowa employers and employees and advice on Iowa Code chapter 97C.

f. Providing the Social Security Administration with notice and supporting evidence of the legal dissolution or consolidation of covered entities.

g. Assisting with referenda for Social Security and Medicare coverage as set forth in Iowa Code chapter 97C.

h. Assisting in the resolution of coverage and taxation questions associated with the Section 218 Agreement and modifications.

i. Negotiating with the Social Security Administration to resolve contribution payment and wage reporting issues concerning wages paid before January 1, 1987.

j. Advising covered employers on Social Security and Medicare tax and withholding issues.

k. Serving as a bridge between covered employers and the Social Security Administration and the IRS by obtaining clarifications of laws, regulations and other appropriate information from other State Social Security administrators, the Social Security Administration, and the Internal Revenue Service.

22.3(2) IPERS shall have no responsibility for Social Security and Medicare matters involving non-Section 218 Agreement employers and employees.

495—22.4(97C) Reports. To assist IPERS in fulfilling its responsibilities hereunder, all covered employers shall provide such reports as IPERS may reasonably require. This reporting requirement is in addition to and does not supersede any federal reporting or other obligations imposed on covered employers in order for them to comply with the current and future withholding, reporting and submission of Social Security and Medicare taxes.

495—22.5(97C) Conflict of laws. In the event of any conflict between Iowa Code chapter 97C, these rules, and the provisions of the Social Security Act, the provisions of the Social Security Act, as amended, shall be controlling.

These rules are intended to implement Iowa Code chapter 97C as amended by 2003 Iowa Acts, House File 534, section 181.

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CHAPTERS 23 to 25
ReservedCHAPTER 26
APPEALS AND CONTESTED
CASES—PROCEEDINGS

495—26.1(17A,97B) Scope and applicability. These rules are applicable to appeals and contested case proceedings conducted by the Iowa Public Employees' Retirement System.

495—26.2(17A,97B) Definitions. Except where otherwise specifically defined by law:

"Appeal" means a dispute, other than a disability claim under Iowa Code section 97B.52A, of an agency decision or action. An appeal shall be conducted as a contested case if IPERS has issued its final agency decision and if the aggrieved party wishes to continue in the appeal process.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means an administrative law judge provided by the department of inspections and appeals.

495—26.3(17A,97B) Appeals.

26.3(1) A party who wishes to appeal a decision by IPERS, other than a disability claim pursuant to Iowa Code section 97B.50A, shall, within 30 days after notification was mailed to the party's last-known address, file with IPERS a notice of appeal in writing setting forth:

- a. The name, address, and social security number of the applicant;
- b. A reference to the decision from which the appeal is being made;
- c. The fact that an appeal from the decision is being made;
- d. The grounds upon which the appeal is based; and
- e. Any evidence necessary to support the appeal.

Upon receipt of the appeal, IPERS shall conduct an internal review of the facts and circumstances involved, in accordance with its appeal review procedure. IPERS shall issue a final agency decision which becomes final unless within 30 days of issuance the member files a request for a contested case proceeding. In determining the date that an appeal or request for a contested case proceeding is filed with IPERS, the following shall apply: An appeal or request for a contested case proceeding delivered by mail shall be deemed to be filed on the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed on the date of receipt. Upon receipt of a request for contested case proceeding, IPERS shall inform the department of inspections and appeals of the filing and of relevant information pertaining to the case in question. The department of inspections and appeals shall, after issuing proper notice, hold a hearing on the case under the contested cases procedure as described in 26.4(17A,97B) and shall affirm, modify, or reverse IPERS' decision.

26.3(2) Appeals of disability claims under Iowa Code section 97B.50A shall be filed and processed as provided under rule 581—21.31(17A,97B) and, upon exhaustion of that ap-

peal process, shall revert to the procedures set forth in 26.4(17A,97B).

495—26.4(17A,97B) Contested case procedures. Appeals of final agency decisions by IPERS shall be conducted pursuant to the following subrules.

26.4(1) Time requirements. Time shall be computed as provided in Iowa Code section 4.1(34).

26.4(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule that specifies a jurisdictional filing deadline. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

495—26.5(17A,97B) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

The request for a contested case proceeding shall:

1. State the name and address of the requester;
2. Identify the specific agency action which is disputed;
3. Where the requester is represented by an attorney, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved; and
4. Include a short and plain statement of the issues of material fact in dispute.

495—26.6(17A,97B) Notice of hearing.

26.6(1) Delivery. Delivery of the notice of hearing by the department of inspections and appeals constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

26.6(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer; and
- h. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) and rule

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26.7(17A,97B), that the presiding officer be an administrative law judge.

495—26.7(17A,97B) Presiding officer. The presiding officer for contested cases shall be an administrative law judge employed by the department of inspections and appeals.

495—26.8(17A,97B) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

495—26.9(17A,97B) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

495—26.10(17A,97B) Disqualification.

26.10(1) A presiding officer shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted, or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that:
 - (1) Is a party to the case, or an officer, CEO or designee or trustee of a party;
 - (2) Is an attorney or legal representative in the case;
 - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
 - (4) Is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

26.10(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to

the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 26.10(3) and 26.24(9).

26.10(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

26.10(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 26.10(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 26.26(17A,97B) and seek a stay under rule 26.30(17A,97B).

495—26.11(17A,97B) Consolidation—severance.

26.11(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

26.11(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

495—26.12(17A,97B) Pleadings.

26.12(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

26.12(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

26.12(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any

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facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

26.12(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

495—26.13(17A,97B) Service and filing of pleadings and other papers.

26.13(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

26.13(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

26.13(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the CEO, or designee, IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the agency.

26.13(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the CEO, or designee, IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

26.13(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

_____ (Date) _____ (Signature)

495—26.14(17A,97B) Discovery.

26.14(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or

shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

26.14(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 26.14(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

26.14(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

495—26.15(17A,97B) Subpoenas.

26.15(1) Issuance.

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least five days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

26.15(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

495—26.16(17A,97B) Motions.

26.16(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

26.16(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

26.16(3) The presiding officer may schedule oral argument on any motion.

26.16(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days, or other time period designated by the agency or presiding officer, prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

26.16(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases. Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or normal submission shall be not less than 20 days after the filing of the

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motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to 26.29(17A,97B) and appeal pursuant to 26.28(17A,97B).

495—26.17(17A,97B) Prehearing conference.

26.17(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

26.17(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

26.17(3) In addition to the requirements of subrule 26.17(2), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters which the parties intended to be officially noticed;
- d. Enter into stipulations for waiver of any provision of law; and
- e. Consider any additional matters which will expedite the hearing.

26.17(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

495—26.18(17A,97B) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

26.18(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency or presiding officer may waive notice of such requests for a particular case or an entire class of cases.

26.18(2) In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

495—26.19(17A,97B) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. A party requesting withdrawal of an appeal shall do so in writing and submit the request to the CEO or presiding officer, whichever is applicable. Unless otherwise provided, a withdrawal shall be with prejudice.

495—26.20(17A,97B) Intervention.

26.20(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

26.20(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. The presiding officer may deny the motion for leave to intervene if not filed timely. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

26.20(3) Grounds for intervention. The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

26.20(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceeding. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

495—26.21(17A,97B) Hearing procedures.

26.21(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

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26.21(2) All objections shall be timely made and stated on the record.

26.21(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law. The cost of representation is the responsibility of the party.

26.21(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

26.21(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

26.21(6) Witnesses may be sequestered during the hearing.

26.21(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

495—26.22(17A,97B) Evidence.

26.22(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

26.22(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

26.22(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

26.22(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

26.22(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

26.22(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

495—26.23(17A,97B) Default.

26.23(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

26.23(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

26.23(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 26.27(17A,97B). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

26.23(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

26.23(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

26.23(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rules of Civil Procedure 1.977.

26.23(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 26.26(17A,97B).

26.23(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

26.23(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

26.23(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 26.30(17A,97B).

495—26.24(17A,97B) Ex parte communication.

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26.24(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 26.10(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

26.24(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

26.24(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

26.24(4) To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 26.13(17A,97B) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through a conference telephone call including all parties or their representatives.

26.24(5) Persons who jointly act as presiding officer or are a committee assigned to conduct a contested case may communicate with each other without notice or opportunity for parties to participate.

26.24(6) The CEO, or designee, or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 26.24(1).

26.24(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 26.18(17A,97B).

26.24(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication while a contested case is pending must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be

submitted for inclusion in the record and disclosed to all parties having an interest in the contested case. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

26.24(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

26.24(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the CEO or agency general counsel for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

495—26.25(17A,97B) Recording costs. Upon request, the agency shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

495—26.26(17A,97B) Interlocutory appeals. Upon written request of a party or on its own motion, the CEO, or designee, may review an interlocutory order of the presiding officer. In determining whether to do so, the CEO shall weigh the extent to which the granting of the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within ten days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

495—26.27(17A,97B) Hearing decision. Following the conclusion of a hearing of an appeal, the administrative law judge within the department of inspections and appeals shall announce the findings of fact and conclusion of law and issue a written decision. The decision shall be signed by the administrative law judge, and filed with IPERS, with a copy mailed to the appellant. This decision shall be deemed final unless, within 30 days after the issuance date of such decision, further appeal is initiated. The issuance date is the date that the decision is signed by the administrative law judge.

495—26.28(17A,97B) Appeal of the hearing decision.

26.28(1) Notice of appeal. An appeal of a written decision of an administrative law judge is initiated by filing a timely notice of appeal with the employment appeal board of the Iowa department of inspections and appeals. In determining the date that a notice of appeal or any other document

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is filed with the employment appeal board, and subject to applicable exceptions adopted by the employment appeal board, the following shall apply: an appeal or any other document delivered by mail shall be deemed to be filed as of the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed as of the date that it is received. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

26.28(2) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The CEO, or a designee, may preside at the taking of additional evidence.

26.28(3) Scheduling. The employment appeal board shall issue a schedule for consideration of the appeal.

26.28(4) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 14 days thereafter any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The employment appeal board may resolve the appeal on the briefs or provide an opportunity for oral argument.

26.28(5) Judicial review. The employment appeal board's decision shall be final and without further review 30 days after the decision is mailed to all interested parties of record unless within 20 days a petition for rehearing is filed with the employment appeal board or within 30 days a petition for judicial review is filed in the appropriate district court. The agency, in its discretion, may also petition the district court for judicial review of questions of law involving any of its decisions. Action brought by the agency for judicial review of its decisions shall be brought in the district court of Polk County, Iowa.

495—26.29(17A,97B) Applications for rehearing.

26.29(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

26.29(2) Content of application. The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 26.28(2), the applicant requests an opportunity to submit additional evidence.

26.29(3) Time of filing. The application shall be filed with the Iowa department of inspections and appeals within 20 days after issuance of the written decision.

26.29(4) Notice to other parties. A copy of the application shall be timely served by the applicant to all parties of record not joining therein.

26.29(5) Disposition. Any application for a rehearing shall be deemed denied unless the appeal board grants the application within 20 days after its filing.

495—26.30(17A,97B) Stays of agency actions.

26.30(1) When available.

a. Any party to a contested case proceeding may petition the agency for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the agency. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The CEO, or designee, may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the agency for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

26.30(2) When granted. In determining whether to grant a stay, the CEO, or designee, or presiding officer shall consider the factors listed in Iowa Code section 17A.19(4).

26.30(3) When vacated. A stay may be vacated by the issuing authority upon application of the agency's representative or any other party.

495—26.31(17A,97B) No factual dispute contested cases.

If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

495—26.32(17A,97B) Emergency adjudicative proceedings.

26.32(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

26.32(2) Issuance of order.

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a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the agency's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the agency;
- (3) Certified mail to the last address on file with the agency;
- (4) First-class mail to the last address on file with the agency; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

26.32(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

26.32(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapters 17A and 97B as amended by 2003 Iowa Acts, House File 534, sections 170 to 181.

CHAPTERS 27 to 29
Reserved

CHAPTER 30
PETITIONS FOR RULE MAKING

495—30.1(17A) Petition for rule making.

30.1(1) Filing. Any person or agency may file a petition for adoption of rules or request for review of rules with the CEO, IPERS, 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. A petition is deemed filed when it is received by the agency. The agency shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency with an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

IOWA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM (IPERS)

Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state the subject matter).	PETITION FOR RULE MAKING
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The petition must provide the following information:

a. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.

b. A citation to any law deemed relevant to the agency's authority to take the action urged or to the desirability of that action.

c. A brief summary of petitioner's arguments in support of the action urged in the petition.

d. A brief summary of any data supporting the action urged in the petition.

e. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

f. Any request by petitioner for a meeting pursuant to rule 30.4(17A).

30.1(2) Content. The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

30.1(3) Denial. The agency may deny a petition because it does not substantially conform to the required form.

495—30.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The agency may request a brief from the petitioner or from any other person concerning the substance of the petition.

495—30.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the CEO, or designee, at the headquarters of the agency.

495—30.4(17A) Agency consideration.

30.4(1) The agency may request the petitioner to submit additional information or argument concerning the petition. The agency may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the agency by any person. Upon request by petitioner in the petition, the agency must schedule a brief and informal meeting between the petitioner and the agency to discuss the petition.

Copies of the petition and accompanying information shall be submitted by the agency to the administrative rules coordinator and to the administrative rules review committee at the conclusion of the petition review.

30.4(2) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the agency must, in writing, deny the petition and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that rule-making proceedings on the subject of the petition have begun. The petitioner shall be deemed notified of the denial or the granting of the petition on the date of notification or mailing by the agency to the petitioner.

30.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the agency's rejection of the petition.

These rules are intended to implement Iowa Code chapters 17A and 97B as amended by 2003 Iowa Acts, House File 534, sections 170 to 181.

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CHAPTER 31
AGENCY PROCEDURE FOR RULE MAKING

495—31.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the Iowa Public Employees' Retirement System are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

495—31.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)"a," solicit comments from the public by any reasonable means on a subject matter of possible rule making by the agency. Notwithstanding the foregoing, except as otherwise provided by law, the agency may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

495—31.3(17A) Public rule-making docket.

31.3(1) Docket maintained. The agency shall maintain a current public rule-making docket.

31.3(2) Anticipated rule making. The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the agency. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the CEO for subsequent proposal under the provisions of Iowa Code section 17A.4(1)"a," the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

31.3(3) Pending rule-making proceedings. The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)"a," to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the effective date of the rule. For each rule-making proceeding, the docket shall indicate:

- a. The subject matter of the proposed rule;
- b. A citation to all published notices relating to the proceeding;
- c. Where written submissions on the proposed rule may be inspected;
- d. The time during which written submissions may be made;
- e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;
- f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed; whether such an analysis or statement or a fiscal impact statement has been issued; and where any such written request, analysis, or statement may be inspected;
- g. The current status of the proposed rule and any agency determinations with respect thereto;
- h. Any known timetable for agency decisions or other action in the proceeding;
- i. The date of the rule's adoption;

- j. The dates of the rule's filing, indexing, and publication;
- k. The date on which the rule will become effective; and
- l. Where the rule-making record may be inspected.

495—31.4(17A) Notice of proposed rule making.

31.4(1) Contents. At least 35 days before the adoption of a rule, the agency shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. Where, when, and how persons may present their views on the proposed rule;
- e. Where, when, and how persons may request an oral proceeding on the proposed rule if the notice does not already provide for one; and
- f. A fiscal impact statement as described under 495—31.7(17A,25B).

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the agency shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the agency for the resolution of each of those issues.

31.4(2) Incorporation by reference. A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 31.12(2).

31.4(3) Copies of notices. Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the agency a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the agency for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and mailing the Notices of Intended Action for a period of one year.

495—31.5(17A) Public participation.

31.5(1) Written comments. For at least 20 days after publication of a Notice of Intended Action, persons may submit arguments, data, and views, in writing, on the subject matter of the published notice. Such written submissions should identify each proposed rule to which they relate and should be submitted to the person and address designated in the Notice of Intended Action.

31.5(2) Oral proceedings. The agency may, at any time, schedule an oral proceeding on a Notice of Intended Action. The agency shall schedule an oral proceeding if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons.

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That request must also contain the following additional information:

a. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

31.5(3) Conduct of oral proceedings.

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)“b,” or this chapter.

b. Scheduling and notice. An oral proceeding on a Notice of Intended Action may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the applicable Notice of Intended Action by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The agency, through an employee of the agency, who is familiar with the substance of the rules proposed in the Notice of Intended Action, shall preside at the oral proceeding. The presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a Notice of Intended Action, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the subject matter of the rules proposed in the Notice of Intended Action. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the agency at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of an oral proceeding, the presiding officer shall give a brief synopsis of the subject matter of the rules proposed in the Notice of Intended Action, a statement of the statutory authority for each proposed rule, and the reasons for the agency's decision to propose each rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of an oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of a meeting.

(5) Physical and documentary submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the agency.

(6) An oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

31.5(4) Additional information. In addition to receiving written comments and oral presentations according to the provisions of this rule, the agency may obtain information concerning its proposed rules through any other lawful means deemed appropriate under the circumstances.

31.5(5) Accessibility. The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the person designated in the Notice of Intended Action at the telephone number or address provided in the Notice of Intended Action in advance of the proceeding to arrange access or other needed services.

495—31.6(17A) Regulatory analysis.

31.6(1) Definition of small business. A “small business” is defined in Iowa Code section 17A.4A(7).

31.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application addressed to IPERS, 7401 Register Dr., P.O. Box 9117, Des Moines, Iowa 50306-9117. The application for registration shall state:

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact; and

e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The agency may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The agency may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be re-

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moved from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

31.6(3) Time of mailing. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the agency shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

31.6(4) Qualified requesters for regulatory analysis—economic impact. The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)“a” after a proper request from:

- a. The administrative rules coordinator;
- b. The administrative rules review committee.

31.6(5) Qualified requesters for regulatory analysis—business impact. The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2)“b” after a proper request from:

- a. The administrative rules review committee;
- b. The administrative rules coordinator;
- c. At least 25 or more persons who sign the request provided that each represents a different small business;
- d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

31.6(6) Time period for analysis. Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in Iowa Code section 17A.4A(4).

31.6(7) Contents of request. A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

31.6(8) Contents of concise summary. The contents of the concise summary shall conform to the requirements of Iowa Code sections 17A.4A(4) and 17A.4A(5).

31.6(9) Publication of a concise summary. The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

31.6(10) Regulatory analysis contents—rules review committee or rules coordinator. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)“a,” unless a written request expressly waives one or more of the items listed in the section.

31.6(11) Regulatory analysis contents—substantial impact on small business. When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2)“b.”

495—31.7(17A,25B) Fiscal impact statement.

31.7(1) A proposed rule that mandates additional combined expenditures exceeding \$100,000 or combined expen-

ditures of at least \$500,000 within five years by all affected political subdivisions, the agency itself, or agencies and entities which contract with political subdivisions to provide services shall be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement shall satisfy the requirements of Iowa Code section 25B.6.

31.7(2) If the agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

495—31.8(17A) Time and manner of rule adoption.

31.8(1) Time of adoption. The agency shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

31.8(2) Consideration of public comment. Before the adoption of a rule, the agency shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

31.8(3) Reliance on agency expertise. Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

495—31.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

31.9(1) The agency shall not adopt a rule that differs from the rule proposed in a Notice of Intended Action on which the rule is based unless:

- a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

31.9(2) In determining whether a Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the agency shall consider the following factors:

- a. The extent to which persons who will be affected should have understood that the rule making on which it is based could affect their interests;
- b. The extent to which the subject matter or the issues determined by the adopted rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c. The extent to which the effects of the adopted rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

31.9(3) The agency shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of an adopted rule that differs from the proposed rule contained in the Notice of Intended Action upon which the adopted rule is based, unless

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the agency finds that the differences are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

31.9(4) Concurrent rule-making proceedings. Nothing in this rule sets aside the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject each with its appropriate Notice of Intended Action.

495—31.10(17A) Exemptions from public rule-making procedures.

31.10(1) Omission of notice and comment. To the extent the agency for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule or set of rules, the agency may adopt that rule or set of rules without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to adoption. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

31.10(2) Categories exempt. The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each category:

- a. Rules that implement nondiscretionary federal law;
- b. Rules that implement nondiscretionary state law;
- c. Rules implementing contribution rates recommended by IPERS;
- d. Minor changes such as grammar, punctuation, spelling and other scrivener's errors that are otherwise nonsubstantive and serve only to make a correction; and
- e. Any other categories added to this list by rule making where such an exemption is justified.

31.10(3) Public proceedings on rules adopted without them. The agency may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule adopted in reliance upon subrule 31.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 31.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. A rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 31.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

495—31.11(17A) Concise statement of reasons.

31.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be

delivered to the person designated in the Notice of Intended Action at the address designated in the Notice of Intended Action. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

31.11(2) Contents. The concise statement of reasons shall contain:

- a. The reasons for adopting the particular rule;
- b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change; and
- c. The principal reasons urged in the rule-making proceeding for and against the rule, and the agency's reasons for overruling the arguments made against the rule.

31.11(3) Time of issuance. After a proper request, the agency shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

495—31.12(17A) Contents, style, and form of rules.

31.12(1) Contents. Each rule making by the agency shall contain the text of each rule and, in addition:

- a. The date the agency adopted the rule;
- b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4A(1)"b," or the agency in its discretion decides to include such reasons;
- c. A reference to all rules repealed, amended, or suspended by the rule;
- d. A reference to the specific statutory or other authority authorizing adoption of the rule;
- e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;
- f. Effective July 1, 1999, if the agency has not included the subject matter of the proposed rule in a separate rule listing categories of rules for which no waiver provision will be included, a brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waivers or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4A(1)"b," or the agency in its discretion decides to include such reasons; and
- g. The effective date of the rule.

31.12(2) Incorporation by reference. The agency may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated material in full, all or any part of a code, standard, rule, or other matter if the agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency proposed or adopted rule shall fully and precisely identify the incorporated material by location, title, citation, date, and edition, if any; and may state that the proposed or adopted rule includes any later amendments or editions of the proposed material that are binding on the agency by state or federal law or regulation. The agency may incorporate such material by reference in a proposed or adopted rule if copies are readily available to the public at the agency's headquarters. The agency shall retain permanently a copy of materials that are incorporated by reference in a rule. Copies of incorporated material may be obtained at cost from the agency.

31.12(3) References to materials not published in full. When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall prepare and submit to the

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administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text at actual cost upon request and shall ensure that copies of the full text are available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the agency shall provide a statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

31.12(4) Style and form. In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

495—31.13(17A) Agency rule-making record.

31.13(1) Requirement. The agency shall maintain for each separate rule making an index listing and summarizing the rules being proposed, adopted, amended or repealed. In addition, the agency shall maintain a rule-making record as described in subrule 31.13(2) for each separate rule making that it proposes, adopts, or terminates under the provisions of Iowa Code chapter 17A and this chapter. These indices and rule-making records, including materials incorporated by reference, are available for public inspection at IPERS' headquarters.

31.13(2) Contents of rule-making record. The agency shall maintain a file containing the indices from each separate rule making that it proposes, adopts, or terminates under the provisions of Iowa Code chapter 17A and this chapter. This file shall also include information showing the date of publication in the Iowa Administrative Bulletin and ARC number where each applicable rule making was published. Each separate rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to a rule making and any file-stamped copies of agency submissions to the administrative rules coordinator concerning the rule making;

b. All written petitions for declaratory orders, all requests for rule makings, all submissions by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered in connection with the formulation, proposal, or adoption of a rule or the proceeding upon which a rule is based, except to the extent the agency is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

c. Any official transcript of oral presentations made in the rule-making proceedings or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

d. A copy of any regulatory analysis or fiscal impact statement prepared for the rule-making proceedings;

e. A copy of the rule and any concise statement of reasons prepared for the rule;

f. All petitions for amendment, repeal or suspension of the rule;

g. A copy of any objection to the issuance of that rule without public notice and participation filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

h. A copy of any objection to a rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to such objection;

i. A copy of any significant criticism of the rule, including a summary of any petitions for waiver of a rule; and

j. A copy of any executive order concerning the rule.

31.13(3) Effect of record. Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on a rule.

31.13(4) Maintenance of record. The agency shall maintain the rule-making record for a period of not less than five years from the date the rules to which it pertains became effective.

495—31.14(17A) Filing of rules. The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that were issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

495—31.15(17A) Effectiveness of rules prior to publication.

31.15(1) Grounds. The agency may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare.

The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

31.15(2) Special notice. When the agency makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)“b”(3), the agency shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term “all reasonable efforts” requires the agency to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their

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indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)"b"(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of this subrule.

495—31.16(17A) General statements of policy.

31.16(1) Compilation, indexing, public inspection. The agency shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(11)"a," "c," "f," "g," "h," and "k." Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(11)"f," or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

31.16(2) Enforcement of requirements. A general statement of policy subject to the requirements of this subrule shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 31.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

495—31.17(17A) Review by agency of rules.

31.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency shall conduct a formal review of a specified rule to determine whether a new rule should be adopted or the rule should be amended or repealed. The agency may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

31.17(2) In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the agency's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the agency or granted by the agency. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A.

CHAPTER 32
QUALIFIED BENEFITS ARRANGEMENT

495—32.1(97B) Qualified benefits arrangement. This rule establishes a separate unfunded qualified benefits arrangement (QBA) as provided for in Iowa Code section 97B.49I. This arrangement is established for the sole purpose of enabling IPERS to continue to apply the same formula for determining benefits payable to all employees covered by the retirement system created under Iowa Code chapter 97B, including those whose benefits are limited by Section 415 of the Internal Revenue Code.

32.1(1) The agency shall administer the QBA. The agency has full discretionary authority to determine all questions arising in connection with the QBA, including its interpretation and any factual questions arising under the QBA. Further, the agency has full authority to make modifications to the benefits payable under the QBA as may be necessary to maintain the QBA's qualification under Section 415(m) of the Internal Revenue Code.

32.1(2) All members, retired members, and beneficiaries of the agency are eligible to participate in the QBA if their benefits would exceed the limitation imposed by Section 415 of the Internal Revenue Code. Participation is determined for each plan year, and participation shall cease for any plan year in which the benefit of a retiree or beneficiary is not limited by Section 415 of the Internal Revenue Code.

32.1(3) On and after the effective date of the QBA, the agency shall pay to each eligible retiree and beneficiary a supplemental pension benefit equal to the difference between the retiree's or beneficiary's monthly benefit otherwise payable from the agency prior to any reduction or limitation because of Section 415 of the Internal Revenue Code and the actual monthly benefit payable from the agency as limited by Section 415. The agency shall compute and pay the supplemental pension benefits in the same form, at the same time, and to the same persons as such benefits would have otherwise been paid as a monthly pension under the agency except for the IRC Section 415 limitations.

32.1(4) The agency shall determine the amount of benefits that cannot be provided under the agency because of the limitations of Section 415 of the Internal Revenue Code, and the amount of contributions that must be made to the QBA as a separate fund within the retirement fund created in Iowa Code section 97B.7. If applicable, fees for the actuary's service shall be paid by the applicable employers.

32.1(5) Contributions shall not be accumulated under this QBA to pay future supplemental pension benefits. Instead, each payment of contributions by the applicable employer that would otherwise be made to the agency shall be reduced by the amount necessary to pay supplemental pension benefits and administrative expenses of the QBA. The employer shall pay to this QBA the contributions necessary to pay the required supplemental pension payments, and these contributions will be deposited in a separate fund which is a portion of the retirement fund established under Iowa Code section 97B.7 and administered by the agency. This fund is intended to be exempt from federal income tax under Sections 115 and 415(m) of the Internal Revenue Code. The agency shall pay the required supplemental pension benefits to the member out of the employer contributions so transferred. The employer contributions otherwise required under the terms of Iowa Code sections 97B.11, 97B.49B and 97B.49C shall be divided into those contributions required to pay supplemental pension benefits hereunder, and those contributions paid into and accumulated in the retirement fund created at Iowa Code section 97B.7 to pay the maximum

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benefits permitted. Employer contributions made to a separate fund provide supplemental pension benefits shall not be commingled with the contributions paid into and accumulated in the retirement fund created at Iowa Code section 97B.7. The supplemental pension benefit liability shall be funded on a plan-year-to-plan-year basis. Any assets of the separate QBA fund not used for paying benefits for a current plan year shall be used, as determined by the agency, for the payment of administrative expenses of the QBA for the plan year.

32.1(6) A member cannot elect to defer the receipt of all or any part of the payments due under this QBA.

32.1(7) Payments under this rule are exempt from garnishment, assignment, attachment, alienation, judgments, and other legal processes to the same extent as provided under Iowa Code section 97B.39.

32.1(8) Nothing herein shall be construed as providing for assets to be held in trust or escrow or any form of asset segregation for members, retirees, or beneficiaries. To the extent any person acquires the right to receive benefits under this QBA, the right shall be no greater than the right of any unsecured general creditor of the state of Iowa.

32.1(9) This QBA is a portion of a governmental plan as defined in Section 414(d) of the Internal Revenue Code, is intended to meet the requirements of Internal Revenue Code Sections 115 and 415(m), and shall be so interpreted and administered.

32.1(10) Amounts deducted from employer contributions and deposited in the separate QBA fund shall not reduce the amounts that are to be credited to employer contribution accounts under Iowa Code sections 97B.11, 97B.49B and 97B.49C.

This rule is intended to implement Iowa Code section 97B.49I.

CHAPTER 33 UNIFORM RULES FOR WAIVERS

495—33.1(17A,97B,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers from rules adopted by the agency.

33.1(1) Agency authority. A waiver from rules adopted by the agency may be granted in accordance with this rule if:

a. The agency has exclusive rule-making authority to promulgate the rule from which a waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and

b. No statute or rule otherwise controls the grant of a waiver from the rule for which a waiver is requested.

33.1(2) Interpretive rules. This chapter shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the agency does not possess delegated authority to bind the courts to any extent with its definition.

33.1(3) Compliance with statute. No waiver may be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

495—33.2(17A,97B,ExecOrd11) Criteria for waiver. The agency may issue an order granting a waiver, as applied to the circumstances of a specified person, if the petitioner establishes by clear and convincing evidence that:

1. Application of the rule to that person would result in hardship or injustice; and

2. Granting the waiver on the basis of the particular circumstances of that specified person would be consistent with the public interest; and

3. Granting the waiver in that case would not prejudice the substantial legal rights of any other person.

In determining whether a waiver would be consistent with the public interest under paragraph "2," the agency shall consider whether, if the waiver is granted, the public interest will be protected by other means that are substantially equivalent to full compliance with the rule.

33.2(1) The agency may condition the grant of a proposed waiver on such reasonable conditions as are appropriate to achieve the objectives of the particular rule in question through alternative means.

33.2(2) This rule shall not preclude the agency from granting waivers in other contexts or on the basis of other standards if the agency deems it appropriate to do so and is not prohibited by state or federal statute, federal regulations, this rule, or any other rule adopted under Iowa Code chapter 17A from issuing such waivers.

33.2(3) The inadvertent granting of a waiver by the agency shall not be deemed to be a waiver to which the provisions of this rule apply but, depending on the facts and circumstances, the agency may limit enforcement of the affected rule(s) on a prospective basis.

33.2(4) The petitioner shall bear the burden of persuasion when a petition for waiver from an agency rule is filed.

33.2(5) When the rule from which a waiver is sought establishes administrative deadlines, the agency shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

495—33.3(17A,97B,ExecOrd11) Process for filing a petition. Any person may file with the agency a petition requesting a waiver, in whole or in part, of a rule of the agency on the ground that the application of the rule to the particular circumstances of that person would qualify for a waiver.

A petition for a waiver must be submitted in writing to the Administrative Rules Coordinator, Iowa Public Employees' Retirement System (IPERS), 7401 Register Drive, P.O. Box 9117, Des Moines, Iowa 50306-9117. If the request relates to a pending contested case, the request shall also be filed in the contested case proceedings. Waiver rulings shall be made by agency staff having jurisdiction over the particular issue and having the authority to issue final rulings on appeals regarding such issues, provided that the CEO shall have final authority with respect to all waiver rulings.

33.3(1) Contents of petition. A petition for waiver does not need to follow a particular format, but must contain the following elements.

a. The name, address, social security number, and telephone number of the petitioner and the name, address, and telephone number of the petitioner's representative, if any.

b. The specific rule or rules for which a waiver is requested.

c. The precise scope and operative period of the waiver requested, including any alternative means or other condition or modification proposed to achieve the purposes of the rule.

d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition.

e. An explanation of the reasons for the waiver, including all material facts relevant to the waiver in question.

f. A description of any prior contacts between the agency and the petitioner relating to the proposed waiver including, but not limited to, a list or description of prior no-

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tices, investigative reports, advice, negotiations, consultations or conferences, contested case rulings, and penalties relating to the proposed waiver.

g. The name, address, and telephone number of any person or entity that would be adversely affected by the waiver in question.

h. Any information known to the petitioner regarding the agency's treatment of similar cases.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

j. Any signed releases required to obtain relevant information from persons with knowledge of such information.

33.3(2) Burden of proof. When a petition is filed for a waiver, the burden of proof shall be on the petitioner to demonstrate by clear and convincing evidence that the agency should grant the waiver.

495—33.4(17A,97B,ExecOrd11) Additional information. Prior to issuing an order granting or denying a petition for waiver, the agency may request additional information from the petitioner relating to the petition and surrounding circumstances. If the petition was not filed in a contested case, the agency may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and agency representatives.

495—33.5(17A,97B,ExecOrd11) Notices. Within 30 business days after receipt of a petition for waiver of a rule, the agency shall give notice of the pendency of the petition and a concise summary of its contents to all persons to whom notice is required by any provision of law. In addition, the agency may give notice to other persons.

If notice is required to be served, the agency may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the agency attesting that notice has been provided.

495—33.6(17A,97B,ExecOrd11) Intervenor. Persons who qualify as intervenors under any provision of law may intervene in proceedings for waiver of a rule if they file timely petitions for intervention according to agency rules governing such intervention.

495—33.7(17A,97B,ExecOrd11) Hearing, ruling and timing. The provisions of 495—Chapter 26 shall apply to proceedings under this chapter if the petition for waiver is filed in a contested case proceeding. Prior to issuing an order granting or denying a proposed waiver, the agency shall determine whether or not the facts alleged in the proposed waiver are accurate and complete.

33.7(1) Ruling. An order granting or denying a proposed waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons on which that action is based, and a description of the precise scope (including any conditions) and operative period of the waiver, if one is granted.

33.7(2) Timing of ruling. The agency shall grant or deny a petition for waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date or the agency, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days. However, if a petition for waiver has been filed in a contested case proceeding, the agency shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

33.7(3) When deemed denied. Failure of the agency to grant or deny a petition for waiver within the required time period shall be deemed a denial of that petition by the agency.

33.7(4) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

495—33.8(17A,97B,ExecOrd11) Defense. After an order granting a waiver is issued, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

495—33.9(17A,97B,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)"e," the agency shall maintain a record of all orders granting and denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and available to members of the public at the headquarters of the agency.

495—33.10(17A,97B,ExecOrd11) Rules from which the agency shall not grant waivers. The agency shall not grant waivers from the following rules, except as otherwise indicated in the following list.

1. Rules which implement state or federal law, if the waiver could affect the taxability of pension benefits under the Internal Revenue Code and regulations thereunder or the Iowa Code and rules adopted thereunder;

2. Rules which set forth the formulas used to calculate IPERS' monthly retirement benefits, actuarial equivalents, dividends, amounts to be credited to supplemental accounts of active members, refunds, death benefits, and service purchase costs;

3. Rules which implement contribution rates and actuarial assumptions set by IPERS;

4. Rules which limit the release of confidential information;

5. Rules which implement contracts between the agency and its vendors (except as permitted in such contracts);

6. Rules governing separations, disciplinary actions, reductions in force, and grievances and appeals as permitted by statute and applicable agency rules.

7. Rules governing the number of voting members of the IPERS' investment board necessary to constitute a quorum and the number of votes necessary to constitute a vote of that board.

495—33.11(17A,97B,ExecOrd11) Voiding or cancellation. A waiver is void if the material facts upon which the petition is based are not true or if material facts have been withheld or omitted. The agency may at any time cancel a waiver upon appropriate notice and hearing if the agency finds that the facts as stated in the request are not true, material facts have been withheld or omitted, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute, or the petitioner has failed to comply with conditions set forth in the order.

495—33.12(17A,97B,ExecOrd11) Violations of conditions. Violations of the conditions precedent to a waiver's approval shall be deemed to be violations of the particular rule for which the waiver was granted and will be subject to the same remedies or penalties.

495—33.13(17A,97B,ExecOrd11) Appeals. Appeals of the agency's decisions regarding proposed waivers shall be filed

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in writing within 30 days after notice of the decision is mailed to the petitioner.

These rules are intended to implement Executive Order Number 11 and Iowa Code chapters 17A and 97B.

ARC 2927B**REAL ESTATE COMMISSION[193E]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 543B.18 and 543B.27, the Real Estate Commission hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on August 6, 2003, as **ARC 2673B** amending Chapter 9, "Fees," Iowa Administrative Code.

No one appeared at the public hearing held on August 26, 2003, in the Second Floor Professional Licensing Conference Room, 1920 SE Hulsizer, Ankeny, Iowa, and no written comments were received.

On September 11, 2003, the Commission voted 4-1 to terminate the rule making commenced in **ARC 2673B** after concerns were raised by the Administrative Rules Review Committee on September 10, 2003.

ARC 2914B**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 328.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 700, "Aeronautics Administration," Chapter 710, "Airport Improvement Program," Chapter 715, "Commercial Air Service Marketing Program," Chapter 716, "Commercial Air Service Airport Infrastructure Program," and Chapter 720, "Iowa Airport Registration," Iowa Administrative Code.

Amendments to these chapters were identified as a result of reviews conducted in accordance with Executive Order Number 8. Items 1, 2, 5, and 12 update the office name, address and telephone number and add references to the Web site. Item 3 changes the preapplication deadline for the federal program to the due date requested by the Office of Aviation. This will allow enough time for federal approval prior to the start of the federal fiscal year. Item 4 changes the deadline for the state program to the date specified in the application in order to allow time for inclusion in the annual accomplishment program. Items 6 and 7 remove language that is unnecessarily specific. Item 7 also adds a new subrule identifying that equipment purchases are an ineligible project activity. Items 8 and 17 update the office name. Item 9 rescinds a requirement that is unnecessarily restrictive at the application stage. Item 10 changes the title of Chapter 716. Item 11 updates the purpose to match the new title of the chapter and is updated to reflect the source of funds. Items 13 and 14 create consistency between other administrative rules regarding aviation. Item 15 adds a new subrule to add a

maintenance-related facility as an eligible project. Item 16 removes unnecessary language and creates consistency between other administrative rules regarding aviation. Item 18 removes language that is placed in the contract agreement. Item 19 updates the implementation clause for Chapter 716. Items 20 and 23 clarify that Form 300025 is an Iowa form and identifies the office to which the form should be sent. Item 21 clarifies the registration procedure. Item 22 adds language to clarify that FAA inspections of airports certified under 14 CFR Part 139 are accepted in lieu of state inspections. Items 24 and 25 update references to FAA circulars that set out safety standards to reflect the most current editions.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.state.ia.us.
5. Be received by the Director's Staff Division no later than December 2, 2003.

A meeting to hear requested oral presentations is scheduled for Friday, December 5, 2003, at 9 a.m. in the Modal Division Conference Room of the Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These amendments are intended to implement Iowa Code chapters 328, 329 and 330.

Proposed rule-making actions:

ITEM 1. Amend rule 761—700.2(17A) as follows:

761—700.2(17A) Location and submission of documents. Requests for information, assistance or forms and all submissions shall be sent to: Office of ~~Aeronautics Aviation, Air and Transit Division~~, Iowa Department of Transportation, ~~Park Fair Mall, 100 East Euclid Avenue, Suite 7, Des Moines, Iowa 50313; telephone (515)237-3304~~ 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1691. Information and forms are also available through the Internet at <http://www.iawings.com>.

This rule is intended to implement Iowa Code section 17A.3.

ITEM 2. Amend rule 761—710.3(17A) as follows:

761—710.3(17A) Location and information. Requests for information, forms or assistance in completing the forms, and all submissions shall be sent to: Office of ~~Aeronautics Aviation Air and Transit Division~~, Iowa Department of Transportation, ~~Park Fair Mall, 100 East Euclid Avenue, Suite 7, Des Moines, Iowa 50313~~ 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1691. Information and forms

TRANSPORTATION DEPARTMENT[761](cont'd)

are also available through the Internet at <http://www.iawings.com>.

This rule is intended to implement Iowa Code section 17A.3.

ITEM 3. Amend paragraph **710.4(3)“b”** as follows:

b. The completed preapplication for federal airport improvement funds shall be sent to the department at the address in rule 710.3(17A). The preapplication must be received by the department ~~on or before October 1~~ *by the due date requested by the office of aviation* to be considered for funding in the subsequent federal fiscal year.

ITEM 4. Amend subrule 710.5(3) as follows:

710.5(3) Application for funding. The department shall distribute the application instructions and forms annually to each publicly owned airport in Iowa. The applicant shall send the completed application to the department at the address in rule 710.3(17A). The application must be received ~~on or before October 1~~ *by the due date specified in the application instructions* to be considered for funding in the subsequent state fiscal year.

ITEM 5. Amend subrule 715.3(3) as follows:

715.3(3) The program shall be administered by the department's office of *aeronautics aviation*. Information, instructions and application forms may be obtained from: Office of *Aeronautics Aviation*, Iowa Department of Transportation, 100 East Euclid Avenue, Suite 7, Des Moines, Iowa 50313; telephone (515)237-3301 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1691; or through the Internet at <http://www.iawings.com>.

ITEM 6. Amend rule 761—715.4(328) as follows:

761—715.4(328) Eligible project activities. Activities that are eligible for reimbursement include, but are not limited to, the following:

715.4(1) Advertising—radio, television, movie theaters, printed material, billboards, direct mail, and brochures.

715.4(2) Public relations activities—press releases, airport open houses, and other activities targeted at educating the public on the value of the airport and air service; surveys; questionnaires; and marketing studies.

715.4(3) Service improvement activities—including, but not limited to, route analyses, service studies, airline presentations and other activities targeted at increasing air service from an existing or new entry airline.

ITEM 7. Amend rule 761—715.5(328) as follows:

761—715.5(328) Ineligible project activities. Activities that are not eligible for reimbursement include, but are not limited to, the following:

715.5(1) Any activity that advertises or promotes one airport within the service area of another airport.

715.5(2) Any promotional or advertising message that references another Iowa airport for the purpose of identifying a competitive airport.

715.5(3) Any promotional or advertising message that features one specific airline when more than one airline serves the airport.

715.5(4) Administrative costs associated with the commercial air service marketing program or with daily operation of the airport.

715.5(5) Equipment purchases associated with the commercial air service marketing program or with daily operation of the airport.

ITEM 8. Amend rule 761—715.7(328), introductory paragraph, as follows:

761—715.7(328) Application. Completed applications shall be submitted to the ~~Office of Aeronautics aviation~~ and shall contain:

ITEM 9. Rescind and reserve subrule **715.7(5)**.

ITEM 10. Amend **761—Chapter 716**, title, as follows:

COMMERCIAL AIR SERVICE AIRPORT
VERTICAL INFRASTRUCTURE PROGRAM

ITEM 11. Amend rule 761—716.1(328) as follows:

761—716.1(328) Purpose. The purpose of the commercial air service ~~airport~~ *vertical* infrastructure program is to provide funding for improvements to the vertical infrastructure at Iowa's ~~ten~~ commercial air service airports. The source of funds is an appropriation in 1998 Iowa Acts, chapter 1219, section 14, ~~from the rebuild Iowa infrastructure fund from the Iowa general assembly.~~

ITEM 12. Amend rule 761—716.3(328) as follows:

761—716.3(328) Information. Program information, instructions, and forms may be obtained from the Office of *Program Management Aviation*, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1145 239-1691; or through the Internet at <http://www.iawings.com>.

ITEM 13. Amend subrule 716.5(1) as follows:

716.5(1) Terminal building construction or renovation including associated design, land acquisition, grading, ~~and~~ foundation work, ~~floor slabs and utilities.~~

ITEM 14. Amend subrule 716.5(2) as follows:

716.5(2) Hangar construction or renovation including associated design, land acquisition, grading, ~~and~~ foundation work, ~~floor slabs and utilities.~~

ITEM 15. Amend rule 761—716.5(328) by adding the following **new** subrule:

716.5(3) Maintenance facility building construction or renovation including, but not limited to, associated design, land acquisition, grading and foundation work.

ITEM 16. Rescind and reserve rule **761—716.6(328)**.

ITEM 17. Amend subrule 716.7(2) as follows:

716.7(2) Completed work plans shall be submitted to the office of ~~program management aviation~~.

ITEM 18. Rescind and reserve subrule **716.8(3)**.

ITEM 19. Amend **761—Chapter 716**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 8.57 and 328.12 and 1998 Iowa Acts, chapter 1219, section 14.

ITEM 20. Amend subrule 720.4(1) as follows:

720.4(1) Application for site approval. The sponsor shall complete *Iowa Department of Transportation* Form 300025, "Airport Site Approval and Registration Application," and submit it to the ~~department at the address given in rule 761—700.2(17A)~~ *office of aviation*. This Iowa form is available from the Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1691; or through the Internet at <http://www.iawings.com>.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 21. Amend subrule 720.4(5) as follows:

720.4(5) Registration renewal. ~~The department shall issue a registration certificate annually to each airport which is in compliance with the registration requirements. The registration shall be valid for one year. Each airport shall apply annually for a registration renewal on a form provided by the department. The department shall issue a registration certificate to a public-use airport if the airport is in compliance with the registration requirements.~~

ITEM 22. Amend subrule 720.4(6) as follows:

720.4(6) Airport inspection. Each registered public-use airport is subject to inspection by the department at any reasonable time. If the departmental inspection reveals an unsafe condition or failure to meet the minimum safety standards, the department shall record that fact and shall notify the airport sponsor in writing. An FAA inspection of an airport certified under 14 CFR Part 139 may be accepted in lieu of an inspection by the department.

ITEM 23. Amend subrule 720.5(1) as follows:

720.5(1) The sponsor shall complete an application for a certificate of site approval on Form 300025 and submit it to the department at the address given in rule 761—700.2(17A) office of aviation. In the application, the sponsor shall certify that the airport, when completed, will be safe and adequate for the sponsor's intended use.

ITEM 24. Amend paragraph **720.10(2)“b”** as follows:

b. Marking. A hard-surfaced runway or taxiway shall be marked according to FAA Advisory Circular ~~150/5340-1F~~ *150/5340-1H* as amended through August 16, 1991 *December 1, 2000*. A turf landing strip or area shall have markers at all corners of the runway to delineate the runway limits. All markers shall be readily discernible from both the air and the ground.

ITEM 25. Amend paragraph **720.10(3)“a”** as follows:

a. Approaches shall be clear of obstructions above a glide path of 20:1 from the ends of each usable runway. If an obstruction exists in an approach zone, the runway threshold on a paved runway shall be displaced in accordance with FAA Advisory Circular 150/5300-13, Appendix 2, as amended through February 24, 1992 *October 1, 2002*, and marked in accordance with FAA Advisory Circular ~~150/5340-1F~~ *150/5340-1H* as amended through August 16, 1991 *December 1, 2000*. On a turf runway, the runway end markers shall be relocated to provide the prescribed obstruction clearance. The runway length remaining between the displaced threshold and the departure end of the runway is the landing distance available.

ARC 2913B

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to rescind Chapter 718, “General Aviation Hangar Revolving Loan Fund,” Iowa Administrative Code.

2003 Iowa Acts, Senate File 97, section 7, repealed Iowa Code section 330.2 that established the Aviation Hangar Revolving Loan Fund. Therefore, this chapter is no longer needed.

Any person or agency may submit written comments concerning this proposed amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address tracy.george@dot.state.ia.us.
5. Be received by the Director's Staff Division no later than December 2, 2003.

A meeting to hear requested oral presentations is scheduled for Friday, December 5, 2003, at 10 a.m. in the Modal Division Conference Room of the Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

This amendment is intended to implement Iowa Code chapter 330.

Proposed rule-making action:

Rescind and reserve **761—Chapter 718**.

ARC 2917B

GROW IOWA VALUES BOARD[264]

Adopted and Filed Emergency After Notice

Pursuant to the authority of 2003 Iowa Acts, House File 692, section 79(5), the Grow Iowa Values Board amends Chapter 1, "Rules Applicable to All Chapters," adopts Chapter 2, "Organization and Structure," amends Chapter 3, "Grow Iowa Values Fund Financial Assistance," and adopts Chapter 4, "University and College Financial Assistance Program," Chapter 51, "Public Records and Fair Information Practices," Chapter 52, "Board Procedure for Rule Making," Chapter 53, "Petition for Rule Making," Chapter 54, "Petition for Declaratory Order," and Chapter 55, "Uniform Waiver and Variance Rules," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 17, 2003, as **ARC 2747B**.

These amendments establish application requirements, evaluation criteria and procedures by which the Iowa Values Board (IVB) will process requests for financial assistance from the Iowa Values Fund (IVF), including the University and College Financial Assistance. These rules include procedures for petitions for rule making and declaratory orders, a process by which a rule waiver or variance can be requested, policies and procedures concerning public records and fair information practices and procedures by which the Board adopts rules.

The Board actively sought input about the amendments, particularly on the issue of the wage levels and how best to implement the statutory goals of increasing the wealth of Iowans, expanding and stimulating the economy, and increasing the population of Iowa as described in 2003 Iowa Acts, House File 692, section 83.

Eight public hearings, with a total of approximately 157 attendees, were held around the state during September and October. Hearings were held in Mount Pleasant, Davenport, Cedar Falls, Spencer, Atlantic, Mason City and Des Moines (2 hearings). Information about the amendments was made available through the following means:

1. Posting the proposed amendments and the public hearing schedule on IDED's Web site at www.iowasmartidea.com.

2. Sending an E-mail notice to the IVB E-mail distribution list. At the time of distribution, there were 185 names of individuals who had signed up via the Web site to receive information about the Iowa Values Fund and its boards. The notice directed them to the Web site for a listing of the dates, locations and times of the public hearings.

3. Sending an E-mail notice to the IDED E-mail distribution list. At the time of distribution there were 927 names on the list. Included on this list were the following groups:

- Board of Supervisors, Chairpersons
- IDED Board Members
- County Economic Development Contacts (County/Community Economic Development organization or, if none, Mayor and/or City Clerk)
- Chambers of Commerce
- Council of Governments
- Community College Economic Developers
- Professional Developers of Iowa
- State Representatives
- Small Business Development Centers
- State Senators

- Utility Contacts
- Iowa Taxpayers Association
- Iowa Bankers Association
- Association of Business and Industry
- National Federation of Independent Businesses
- State of Iowa, Insurance Division
- John Pappajohn Centers
- Iowa Capital Investment Corporation (ICIC) Board members

- Iowa Capital Investment Board (ICIB) Board members

4. Distributing the proposed amendments at meetings, conferences and other appropriate locations. For example, in Ames at the "Farms, Food and the Future" conference on August 28, 2003, Iowa Values Board members participated in a breakout session about the Iowa Values Fund and handed out copies of the proposed amendments. Board members also personally communicated with members of the public in their areas about the IVB public hearings, gave presentations to local groups, and met with interested individuals to hear their comments.

5. Including a notice in the IDED electronic newsletter of the opportunity to comment on the proposed amendments.

6. Issuing a press release announcing the public hearing schedule. In some public hearing locations, there was also a local press announcement about the date, time and location of the hearing.

The Iowa Values Board Administrative Rules Committee observed the following common themes emerging from the written and oral comments received:

1. Wages. No comments were received regarding the establishment of a statewide eligibility threshold. The following proposals for wage thresholds were suggested:

- 130 percent of the average county or regional wage with a 12-month "ramp up" period to allow a company to meet the wage rate.
- 130 percent of the average county wage or \$13.55, whichever is higher.
- 120 percent of the regional wage, using the five regions identified in the IVF legislation.

2. Benefits. Several individuals expressed the opinion that employers receiving IVF financial assistance should be required to pay insurance benefits for their employees. The two proposals that were presented were:

- Pay 80 percent of a standard medical and dental plan (this is similar to the statutory requirement for participation in the New Jobs and Income Program).
- Pay benefits, but use more flexible language in the rules to allow a wider array of benefits to be considered. Some liked the definition IDED has in the pending rules for the New Capital Investment Program (NCIP) (261—Chapter 64, published herein as **ARC 2915B**).

3. Good corporate citizen. At most of the hearings, people expressed the view that IVF financial assistance should only be awarded to companies that are in compliance with environmental and worker safety statutes. Specifically, companies should be required to disclose any environmental and worker safety law violations within the past five years and report on corrective actions taken.

4. Repayment "clawback" provisions. There was a strong sense that companies that do not perform as pledged should be required to repay IVF financial assistance. In addition to having contract terms to require repayment, Board members received comments to the effect that the rules should make a clear statement that such companies will be re-

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quired to agree to “clawback” provisions as a condition of receiving funds.

5. The three industry clusters. There was support for targeting IVF funds in the areas of life sciences, advanced manufacturing and information solutions as long as other businesses are not excluded from eligibility.

6. Small businesses; entrepreneurial start-up businesses. Several members of the public attending the hearings asked Board members to consider having different eligibility requirements for start-up businesses. The opinion was that these businesses may not create many jobs, but they do create wealth and could create business opportunities in fields/industries/markets not already in existence in the state.

7. IVF allocation for CEBA, VAAPFAP, TSBFAP. There was support for an IVF allocation of \$11 million for CEBA and VAAPFAP. At the Atlantic public hearing, there was a suggestion that TSBFAP also be included in the \$11 million allocation.

Following a review of all the comments, IDED staff recommendations and discussion among Committee members, the IVB Administrative Rules Committee prepared amendments for adoption by the Iowa Values Board. The Iowa Values Board made the following revisions to the proposed amendments:

1. Three changes were made in subrule 1.2(3).

- The final rules retain the allocation for CEBA and VAAPFAP. In addition, this subrule was revised to authorize the Board to allocate funds for the Entrepreneurial Ventures Assistance (EVA) Program, the Targeted Small Business Financial Assistance Program (TSBFAP), and other IDED programs.

- Language was added to this subrule to allow the Board to allocate a portion of IVF funds for start-up projects. This revision specifies that a “start-up” business is one that has been in business for less than three years and one that has an identifiable market, a viable product for market and a commitment to remain in Iowa. Start-up businesses are exempt from the wage level and job count requirements of these rules.

- In reviewing the proposed amendments and 2003 Iowa Acts, House File 683, section 66(5), it was pointed out that there was a difference between the proposed amendment and the statute. The subrule specifies that the “board” could allocate a portion of the funds to IDED for technical assistance, information technology, and air, rail or river port transportation-related purposes. The statute states that the “department” may use funds for these purposes. To correct this inconsistency, the final subrule refers to “department.”

Subrule 1.2(3) now reads as follows:

“1.2(3) Allocation of money in the fund.

“a. Money appropriated to the fund is to be used for the purposes stated in subrule 1.2(1), including funding for programs administered by the department. These appropriations are subject to actual receipt of moneys by the fund. If money received by the fund is less than the amount appropriated, such amount will be prorated proportionately. The board shall allocate a percentage of the moneys for business start-ups, business expansion, business modernization, business attraction, business retention, and marketing. The board will allocate funds semiannually. The board may adjust the allocation if it determines that it is necessary to do so to ensure the availability of funds in those categories in which the greatest need is demonstrated to exist or to respond to investment opportunities. The board may allocate an amount to the VAAPFAP program (rules for the VAAPFAP program are lo-

cated at 261—Chapter 57), the CEBA program (rules for the CEBA program are located at 261—Chapter 53), the entrepreneurial ventures assistance (EVA) program (rules for the EVA program are located at 261—Chapter 60), the targeted small business financial assistance program (TSBFAP) (rules for the TSBFAP are located at 261—Chapter 55) and other programs administered by the department. The department may use funds appropriated under 2003 Iowa Acts, House File 683, section 66, to procure technical assistance from either the public or private sector, for information technology purposes, and for rail, air, or river port transportation-related purposes.

“The board may allocate a portion of the funds to assist start-up businesses. Start-up businesses are defined as those that have been in business for less than three years. A start-up business shall demonstrate that its project has an identifiable, viable market; a viable product ready for market; and a commitment to stay in Iowa. Start-up businesses are exempt from the wage level and job count requirements in these rules.

“b. Applications submitted by businesses seeking financial assistance from programs that are administered by the department, but funded with values fund money shall comply with the department’s application procedures for those programs. Notwithstanding the foregoing, the board shall have final authority to approve or deny such applications where such authority is granted to the board by law.”

2. Subrule 1.5(2) was revised to specifically refer to repayment (“clawback”) provisions. All IVF contracts for financial assistance must include reimbursement provisions if the business does not fulfill the obligations stated in the contract. Language was added to allow specific repayment provisions to be negotiated on a project-by-project basis. The subrule was also revised to extend the date by which a contract must be signed from 60 days to 120 days from the award date. The subrule now reads as follows:

“1.5(2) Contract required. The board shall direct the department to prepare an agreement, which includes, but is not limited to, a description of the project to be completed by the business; the wage, job and education standards of the jobs to be created or retained that contribute to attaining the statutory goals of the fund; length of the project period; conditions to disbursement as approved by the board; and the reimbursement requirements of the business or other penalties imposed on the business in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions (“clawback provisions”) to be negotiated on a project-by-project basis. Successful applicants will be required to execute an agreement within 120 days of the approval. Failure to do so may result in action by the board to rescind the award. The 120-day time limit may be extended by the board for good cause shown.”

3. A new subrule 3.2(2) was adopted regarding wage requirements for IVF assistance. The subrule establishes award amounts based on a sliding scale. The higher the average wage, the higher the allowable per job award amount. Percentages are based on average county or regional wage rates using the calculations described. Fifty percent or more of the jobs must start at 110 percent of the average county or regional wage. Award terms and amounts are based on factors such as percentage of loan versus forgivable loan, industry cluster, potential for agglomeration, job quality and benefits. The new subrule reads as follows:

“3.2(2) Wage requirements and award amounts.

GROW IOWA VALUES BOARD[264](cont'd)

“a. Wage requirement. Fifty percent or more of the jobs must start at 110 percent of the average county wage or average regional wage, whichever is lower.

“b. Award amounts. Award amounts shall be based on the average wage of those jobs that meet or exceed the following wage requirements (only qualified jobs will be counted):

Percent of Average County Wage or Average Regional Wage	Award Amount
“110%	up to \$3,000 per job
“120%	up to \$4,000 per job
“130%	up to \$5,000 per job
“140%	up to \$6,000 per job
“150%	up to \$7,000 per job

“c. Definitions. The percentages described in paragraph “b” are based on the average county wage or average regional wage, whichever is lower. As used in this rule, the following definitions shall apply:

“Average county wage’ means the average the department calculates annually using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa workforce development department, audit and analysis section. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

“Average regional wage’ means the wage calculated annually by the department using a methodology in which each particular county is considered to be a geographic center of a larger economic region. The wage threshold for the central county is calculated using the average wage of that county, plus each adjoining Iowa county, so that the resulting figure reflects a regional average that is representative of the true labor market area. In performing the calculation, the greatest importance is given to the central county by weighting it by a factor of four, compared to a weighting of one for each of the other adjoining counties. The central county is given the greatest importance in the calculation because most of the employees in that central county will come from that same county, as compared to commuters from other adjoining counties.

“d. Award terms and amounts shall be based on factors including, but not limited to, percentage of loan versus forgivable loan, industry cluster, potential for agglomeration, job quality and benefits.”

• Rule 264—3.5(80GA,HF692,HF683), numbered paragraph “7,” was revised to require applicants to describe any violations of law in the preceding five years, including environmental and worker safety statutes, rules and regulations. For any violations, applicants shall provide an explanation of any mitigating circumstances and corrective action taken to achieve compliance. Numbered paragraph “7” now reads as follows:

“7. A description of any violations of law in the preceding five years including, but not limited to, worker safety statutes, rules and regulations. The description must include violations of a federal or state environmental protection statute, regulation or rule within the previous five years. If the violations seriously affected the public health or safety, or the environment, the business shall provide an explanation of any mitigating circumstances and corrective action taken to achieve compliance. If requested by the department, the business shall provide copies of materials documenting the type of violation(s), any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the department, the committee and the board in understanding the nature of any violation(s).”

The Board finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments be made effective on October 22, 2003, upon filing. Chapters 1 and 3, which were Adopted and Filed Emergency in the August 20, 2003, Iowa Administrative Bulletin as **ARC 2698B**, included rules providing for an expiration date. It is beneficial to the public to have final rules in place prior to the expiration of those emergency rules on October 28, 2003. This will prevent a period of time when no rules would be in effect and the Board would be unable to take action on applications. The emergency implementation of the amendments ensures the existence of program rules to allow the Board to respond to investment opportunities as quickly as possible, and provides a level playing field for financial assistance applicants. The immediate implementation of the amendments allows the program to be administered based on changes made as a result of public comments reflecting the public’s views about program requirements.

The Grow Iowa Values Board adopted these amendments on October 22, 2003.

These amendments became effective on October 22, 2003.

These amendments are intended to implement 2003 Iowa Acts, House File 692, and House File 683.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 1, 3; adopt Chs 2, 4, 51 to 55] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 2747B**, IAB 9/17/03.

[Filed Emergency After Notice 10/22/03, effective 10/22/03]
[Published 11/12/03]

[For replacement pages for IAC, see IAC Supplement 11/12/03.]

ARC 2915B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts new Chapter 64, "New Capital Investment Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2676B** on August 6, 2003.

The new rules implement the New Capital Investment Program (NCIP) as authorized by 2003 Iowa Acts, House File 677. The rules establish application procedures and evaluation criteria, detail the tax benefits available to approved businesses, and establish the contractual and compliance components of the program.

A public hearing on the new chapter was held on August 27, 2003. No members of the public attended this hearing, but the Department did receive two comments during the comment period:

1. A question was raised about one of the eligibility requirements stated in subrule 64.3(1). To be eligible to receive benefits, a company was required to provide comprehensive health benefits to all full-time employees. The issue is whether this factor should be an eligibility requirement or part of the evaluation process. Upon closer review of the legislation, the Department concurred with the assessment that the legislation did not mandate insurance benefits as an eligibility requirement. In the final rules, the provision of insurance benefits is now a part of the application evaluation process and 15 points are available for this criterion. A new paragraph "d" regarding insurance benefits was added to subrule 64.3(3), and a definition of "comprehensive health benefits" is now provided in rule 261—64.2(80GA,HF677).

2. Comments were received from the Department of Revenue (DR) concerning the "capital investment" definition. Staff of DR suggested, and the department has incorporated, technical corrections to paragraph "3" in this definition to update and clarify the language regarding the lease of property.

The Department also received comments from the Administrative Rules Review Committee regarding the application approval process. The Department made changes to subrule 64.3(2) to address the Committee's comments. The final rules now specify when an application will be referred for final action to the IDED Board of Directors versus the Director's office.

The IDED Board adopted these rules on October 16, 2003.

These rules are intended to implement 2003 Iowa Acts, House File 677.

These rules will become effective on December 17, 2003. The following **new** chapter is adopted.

CHAPTER 64

NEW CAPITAL INVESTMENT PROGRAM

261—64.1(80GA,HF677) Purpose. The purpose of the new capital investment program is to promote new economic development through new capital investments that upgrade and expand the capabilities of Iowa businesses by allowing the businesses to be more competitive in the world economy.

261—64.2(80GA,HF677) Definitions.

"Act" means 2003 Iowa Acts, House File 677.

"Average county wage" means the average wage the department calculates annually using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa workforce development department, audit and analysis section. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Biotechnology-related processes" means the use of cellular and biomolecular processes to solve problems or make products. Farming activities shall not be included for purposes of this definition.

"Board" means the Iowa department of economic development board.

"Capital investment" means:

1. The costs of manufacturing machinery and equipment and computers, as defined in Iowa Code section 427A.1(1)"e" and "j," which are purchased for use in the operation of the business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

2. The cost of improvements made to real property that is used in the operation of the business.

3. The purchase price of real property and any existing buildings and structures located on the real property. For purposes of this definition, if the business is leasing the property, the overall cost or value of the lease shall constitute a capital investment if the lease is treated as a capital transaction for tax purposes. A capital transaction for tax purposes means that the asset must be depreciated for federal income tax purposes. The business must be depreciating the leased property on the business's income tax return in order to claim an investment tax credit for the cost or value of the leased property.

"Community" means a city, county, or other entity established pursuant to Iowa Code chapter 28E.

"Comprehensive health benefits" means a standard medical insurance plan provided by the business and of which the business pays at least 80 percent of the premiums for employee-only coverage. The department shall determine what constitutes a standard medical insurance plan. Additional health benefits provided and paid for by the business may be considered in situations in which the business is paying a lesser percentage of the medical premiums. Additional health benefits include dental insurance, vision insurance, prescription drug coverage and health promotion programs.

"Department" means the Iowa department of economic development.

"Director" means the director of the Iowa department of economic development.

"Full-time" means the equivalent of employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or

2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

"Job creation goal" means the number of new high-quality jobs that the business pledged to create in its application.

"Program" means the new capital investment program.

"Project" means the activity, or set of activities, proposed in the application by the business, which will result in accom-

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plishing the goals of the program and for which the business requests benefits. A project may include the start-up, location, or expansion of a business.

“Project completion” means the date of completion of all improvements necessary for the start-up, location, or expansion of the business within the community.

“Project initiation” means any one of the following:

1. The start of construction of new or expanded buildings;
2. The start of rehabilitation of existing buildings;
3. The purchase or leasing of existing buildings; or
4. The installation of new machinery and equipment or new computers to be used in the operation of the business’s project.

The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building construction, expansion or rehabilitation shall not constitute project initiation.

“Retained jobs” means the full-time jobs that are at risk of being eliminated if the project does not proceed as planned.

“Tax credit certificate” means a document issued by the department to an approved business which indicates the amount of unused investment tax credit the business may receive in the form of a refund.

“Value-added agricultural products” means agricultural products which, through a series of activities or processes, can be sold at a higher price than the original purchase price.

261—64.3(80GA, HF677) Applying for benefits.

64.3(1) Eligibility requirements. To be eligible to receive benefits under this program, a business shall meet all of the following requirements:

a. Business closures. The business has not closed or reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

b. Retail businesses. The business is not a retail business or a business where entrance is limited by a cover charge or membership requirement.

c. Capital investment. The business shall make a new capital investment of at least \$1 million within three years of application approval.

d. Environmental or worker safety violations. The business has not, within the five years prior to the application date, violated state or federal environmental or worker safety statutes, rules or regulations. If such violations have occurred, the business must demonstrate that there were mitigating circumstances or that such violations did not seriously affect public health or safety or the environment. The business shall provide with the application an affidavit stating that this requirement has been met.

e. Project initiation. A business shall not be eligible for benefits under this program if the project for which it is requesting benefits has been initiated.

f. Violations of law. If the department finds that a business has a record of violations of law over a three-year period that tends to show a consistent pattern, the business shall not be eligible for benefits under this program. The time period that will be reviewed for violations of a federal or state environmental statute, regulation, or rule is the previous five years as required by Iowa Code section 15A.1(3)“a.”

64.3(2) Application. The department shall develop a standardized application and make it available to a business applying for benefits. The application procedures are as follows:

a. Applications may be submitted at any time.

b. The community in which the business’s project will be located shall review the application to determine whether the business is eligible for benefits. If the community determines that the business is eligible, it shall approve by resolution the start-up, location, or expansion of the business for the purpose of receiving program benefits. The community shall then submit the application for benefits to the department.

c. Each application received from a community will be reviewed by the department. The department may request additional information from the business applying for benefits or use other resources to obtain the needed information.

d. Department staff will rate applications according to the criteria in subrule 64.3(3).

e. Decision making on applications.

(1) Applications which involve the creation of 50 or more new jobs and a capital investment equal to or greater than the minimum capital investment required by the new jobs and income program shall be referred to the board. The minimum capital investment required by the new jobs and income program is \$10 million indexed to 1993 dollars based on the gross national product implicit price deflator published by the Bureau of Economic Analysis of the United States Department of Commerce. Department staff will prepare a report for the board which includes the staff recommendation and the application’s rating. The board will make the final decision to approve, defer, or deny the application.

(2) For all other applications, department staff will present their recommendation and the application’s rating to the director. The director will make the final decision to approve, defer, or deny the application.

f. Written notification of the board’s or the director’s decision will be sent to the business within two weeks of the date on which the decision is made.

64.3(3) Application rating system. Each application will be reviewed and rated using the following criteria:

a. Community and state impacts. Factors to be considered include, but are not limited to, the following:

(1) Impact of the proposed project on the community and the state.

(2) Local/regional community funding match.

(3) Impact on in-state competitors.

Maximum – 20 points.

b. Impact on current and new jobs. Factors to be considered include, but are not limited to, the following:

(1) Impact on the business’s current employees, including the potential for increased skills and wages, as a result of this project.

(2) Total number of jobs to be created as the result of the project and the starting wages for these jobs.

(3) Number of high-quality jobs to be created. “High-quality jobs” means new full-time or new career-type positions that have a starting wage equal to or greater than the average county wage.

(4) Number of retained jobs.

(5) Other characteristics that contribute to the quality of jobs, including but not limited to turnover rate, safe working environment, and additional fringe benefits.

Maximum – 35 points.

c. Impact on the business. Factors to be considered include, but are not limited to, the following:

(1) Impact that the investment will have on the ability of the business to expand, upgrade, or modernize its capabilities.

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(2) The extent to which the new capital investment will result in a more productive and competitive business enterprise and workforce.

(3) Potential for future growth in the industry.

Maximum – 30 points.

d. Insurance benefits. The business provides comprehensive health benefits, as defined in rule 261—64.2(80GA, HF677), to all full-time employees. If the business meets this criterion, it will receive 15 points.

The maximum total score possible is 100 points. Projects that score less than 60 points will not be recommended for approval to the director.

64.3(4) Project period. An approved business must complete its project within three years of the application approval date. If the project involves the creation of new high-quality jobs, the approved business must, upon reaching its job creation goal, maintain those jobs for two additional years.

64.3(5) Negotiations. The department reserves the right to enter into negotiations with a business regarding the amount of benefits the business may be eligible to receive. The department reserves the right to negotiate the amount of all benefits except the refund of sales, services, and use taxes paid to contractors and subcontractors.

261—64.4(80GA, HF677) Benefits. The following benefits may be available to an approved business. The amount of the benefits will be negotiated by the department with the approved business and reflected in the executed agreement.

64.4(1) Sales, services, and use tax refund. Pursuant to Iowa Code section 15.331A, the approved business shall be entitled to a refund of the sales and use taxes paid under Iowa Code chapters 422 and 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility being built, expanded, or rehabilitated as part of the project. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

To receive a refund of sales, services, and use taxes paid to contractors or subcontractors, the approved business must, within one year after project completion, make an application to the Iowa department of revenue.

64.4(2) Research activities credit. Pursuant to Iowa Code section 15.335, the approved business shall be entitled to a research activities credit. This tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II (personal) or division III (corporate). This incentive is a tax credit for increasing research activities in this state during the period the business is participating in the program. This credit may equal up to 6½ percent of the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures. This credit is in addition to the credit authorized in Iowa Code sections 422.10 and 422.33, subsection 5. If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any tax credit in excess of the tax liability shall be refunded to the approved business with interest computed under Iowa Code section 422.25. This tax credit may be used by another business with which the approved business is affiliated and with which the approved business files state income tax returns on a consolidated basis. In lieu of claiming a refund, the ap-

proved business may elect to have the overpayment credited to its tax liability for the following year.

64.4(3) Investment tax credit or insurance premium tax credit.

a. Investment tax credit. An approved business may claim a tax credit equal to a percentage of the new capital investment directly related to the approved project. The percentage shall be equal to the amount provided in paragraph "c." Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

The tax credit shall be allowed against taxes imposed under Iowa Code chapter 422, division II (personal), division III (corporate), or division V (franchise). This tax credit may be used by another business with which the approved business is affiliated and with which the approved business files state income tax returns on a consolidated basis. If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

The approved business may not claim an investment tax credit for a capital investment above the amount stated in the agreement described in subrule 64.5(1). An approved business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures.

b. Insurance premium tax credits. An approved business may claim a tax credit equal to a percentage of the new capital investment directly related to the start-up, location, or expansion of an approved business under the program. The percentage shall be equal to the amount provided in paragraph "c." The tax credit shall be allowed against taxes imposed in Iowa Code chapter 432. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The approved business may not claim an insurance premium tax credit for a capital investment above the amount stated in the agreement described in subrule 64.5(1). An approved business may instead, prior to project completion, seek to amend the contract, allowing the business to receive an insurance premium tax credit for additional capital expenditures.

c. Tax credit percentage. The amount of tax credit claimed under this subrule shall be determined as follows:

(1) If the department determines, based on the application of the approved business, that high-quality jobs are not created but economic activity within the state is advanced, the approved business may claim a tax credit of up to 1 percent of the amount of new capital investment, as described in the agreement.

(2) If the department determines, based on the application of the approved business, that one to five high-quality jobs are created, the approved business may claim a tax credit of up to 2 percent of the amount of new capital investment, as described in the agreement.

(3) If the department determines, based on the application of the approved business, that six to ten high-quality jobs are created, the approved business may claim a tax credit of up to

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3 percent of the amount of new capital investment, as described in the agreement.

(4) If the department determines, based on the application of the approved business, that 11 to 15 high-quality jobs are created, the approved business may claim a tax credit of up to 4 percent of the amount of new capital investment, as described in the agreement.

(5) If the department determines, based on the application of the approved business, that 16 or more high-quality jobs are created, the approved business may claim a tax credit of up to 5 percent of the amount of new capital investment, as described in the agreement.

64.4(4) Investment tax credit refunds. Subject to prior approval by the department, in consultation with the Iowa department of revenue, an approved business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to apply for a refund of all or a portion of an unused tax credit. For purposes of this subrule, an approved business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol. The refund may be used against a tax liability imposed under Iowa Code chapter 422, division II (personal), division III (corporate), or division V (franchise). To apply to receive a refund of all or a portion of an unused investment tax credit, the following procedures apply:

a. Department approval required. The department will determine whether an approved business's project primarily involves the production of value-added agricultural products or uses biotechnology-related processes.

b. How to apply for tax credit certificate. The business shall apply for a tax credit certificate using the form provided by the department. Requests for tax credit certificates will be accepted between May 1 and May 15 of each fiscal year. Only those approved businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. For a cooperative described in Section 521 of the Internal Revenue Code, the department shall require the cooperative to submit a list of members whom the cooperative wishes to receive a tax credit certificate for their prorated share of ownership. The cooperative shall submit its list in a computerized electronic format that is compatible with the system used or designated by the department. The computerized list shall, at a minimum, include the name, address, social security number or taxpayer identification number, business telephone number and ownership percentage, carried out to six decimal places, of each cooperative member approved for a tax credit certificate. The cooperative shall also submit a total dollar amount of the unused investment tax credit for which the cooperative's members are requesting a tax credit certificate.

c. Application processing. The department will make public by June 1 of each fiscal year the total number of requests for tax credit certificates and the total dollar amount of requested tax credit certificates that have been submitted. The department will issue tax credit certificates within a reasonable period of time following the June 1 announcement.

d. Issuance of tax credit certificates. The department shall not issue tax credit certificates to approved businesses in the new capital investment program, the new jobs and income program, and the enterprise zone program which total more than \$4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of \$4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an approved business will be prorated based upon the total dol-

lar amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each approved business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an approved business submits a request in the amount of \$1 million and the total amount of requested tax credit certificates equals \$8 million, the business will be issued a tax credit certificate in the amount of \$500,000.

$$\frac{\$4 \text{ million}}{\$8 \text{ million}} = 50\% \times \$1 \text{ million} = \$500,000$$

e. When claimed. Tax credit certificates shall not be valid until the tax year following the date of project completion. The tax credit certificates shall not be transferred except in the case of a cooperative as described in Section 521 of the Internal Revenue Code whose approved project primarily involves the production of ethanol. For such cooperative, the individual members of the cooperative are approved to receive the tax credit certificates. The approved business may not claim a tax credit refund unless a tax credit certificate issued by the department is attached to the taxpayer's tax return for the tax year in which the tax credit refund is claimed. Any unused investment tax credit in excess of the amount of the tax credit certificate issued by the department may be carried forward for up to seven years after the qualifying asset is placed in service or until the tax credit is depleted, whichever occurs first.

f. Carryforward. An approved business may apply for a tax credit certificate once each year for up to seven years after the qualifying asset is placed in service or until the approved business's unused investment tax credit is depleted, whichever occurs first. For example, an approved business which completes a project in October 2004 and has an investment tax credit of \$1 million may apply for a tax credit certificate in May 2005. If, because of the proration of the \$4 million of available refundable credits for the fiscal year, the business is awarded a tax credit certificate in the amount of \$300,000, the business may claim the \$300,000 refund and carry forward the unused investment tax credit of \$700,000 up to seven years or until the credit is depleted, whichever occurs first.

261—64.5(80GA,HF677) Agreement, compliance, and repayment provisions.

64.5(1) Agreement. After the department negotiates the amount of benefits that the approved business shall receive and approves the application, the department shall enter into an agreement with the approved business. This agreement shall include, but is not limited to:

a. Provisions governing the requirements of the Act and these rules which the approved business agreed to satisfy as described in the approved application;

b. Reporting requirements such as an annual certification by the approved business that it is in compliance with the Act and these rules;

c. The amount or level of tax benefits the approved business shall receive as negotiated by the department; and

d. The method of determining the amount of benefits received by the approved business, which will be repaid in the event of the failure to maintain the requirements of the Act and these rules.

In addition the agreement shall specify that an approved business that fails to maintain the requirements of the Act and these rules shall not receive benefits for each year during which the business is not in compliance. The approved business and the department must execute the agreement within

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180 days from the application approval date. If the agreement is not signed by that date, the department may rescind the benefits awarded to the approved business unless the approved business has received prior written permission from the department to exceed the time frame for an agreed-upon time period.

64.5(2) Annual certification. An approved business shall certify annually to the community and the department that the business is in compliance with the Act, these rules, and the agreement it has entered into with the department.

64.5(3) On-site monitoring. The approved business shall, upon prior reasonable notice and at any time (during normal business hours), permit the department, its representatives or the state auditor to examine, audit or copy any plans and work details pertaining to the project; all of the approved business's books, records, and accounts relating to the project; and all other documentation or materials related to the agreement.

64.5(4) Repayment of benefits. If the approved business has received benefits and fails to meet and maintain any of the requirements of the Act, these rules, or the agreement, the business is subject to repayment of all or a portion of the benefits that it has received. The repayment will be calculated as follows:

a. Job creation. If the approved business does not meet its job creation goal as defined in the agreement or fails to maintain the required number of jobs, the business shall repay a percentage of the tax credits claimed under subrules 64.4(2) and 64.4(3). The repayment percentage will be equal to the percentage of jobs that the approved business failed to create or maintain.

b. Wages and benefits. If the approved business fails to comply with the wage or benefit requirements outlined in the agreement, the business shall not receive the tax credits described in subrules 64.4(2) and 64.4(3) for each year during which the business is not in compliance.

c. Capital investment. If the approved business does not meet the capital investment requirement in the agreement, repayment of the tax credits claimed under subrules 64.4(2) and 64.4(3) shall be calculated as follows:

(1) If the business has not met the minimum investment requirement of \$1 million, the business shall repay all of the benefits that it has received.

(2) If the business has met 50 percent or less of the pledged capital investment, the business shall repay the same percentage in benefits as the percentage that the business failed to invest.

(3) If the business has met more than 50 percent but not more than 75 percent of the pledged capital investment, the business shall repay one-half of the percentage in benefits that the business failed to invest.

(4) If the business has met more than 75 percent but not more than 90 percent of the pledged capital investment, the business shall repay one-quarter of the percentage in benefits that the business failed to invest.

d. Selling, disposing, or razing of property. If, within five years of purchase, the approved business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, building, or other existing structures for which an investment tax credit or insurance premium tax credit was claimed under subrule 64.4(3), the income tax liability of the approved business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) 100 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within one full year after being placed in service.

(2) 80 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within two full years after being placed in service.

(3) 60 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within three full years after being placed in service.

(4) 40 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within four full years after being placed in service.

(5) 20 percent of the tax credit claimed under subrule 64.4(3) if the property ceases to be approved for the tax credit within five full years after being placed in service.

64.5(5) Layoffs or closures. If an approved business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the benefits and assistance, the department may reduce or eliminate all or a portion of the benefits and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the benefits and assistance, the business may be subject to repayment of all or a portion of the benefits and assistance that it has received.

64.5(6) Extensions. If an approved business fails to meet its requirements under the Act, these rules, or the agreement, the department, in consultation with the community, may elect to grant the business a one-year period to meet the requirements. Only one 12-month extension will be granted to the approved business. Extensions may be granted only when one of the following conditions applies:

a. The delay in achievement of the job creation goal or pledged capital investment was caused by events over which the approved business had no control and could not have reasonably predicted and there is a reasonable probability that the originally proposed job creation goal or pledged capital investment can be achieved; or

b. The project does not fit under paragraph "a" and the approved business has demonstrated to the department's satisfaction the existence of special circumstances.

261—64.6(80GA, HF677) Amendments. Any substantive change to an approved project will be considered a contract amendment. The amendment must be requested in writing. No amendment will be valid until approved by the department.

261—64.7(80GA, HF677) Other benefits. An approved business may receive other applicable federal, state, and local incentives and tax credits in addition to those provided in this program. However, an approved business which participates in this program shall not receive any funds, tax credits, or incentives from the new jobs and income program or the enterprise zone program.

These rules are intended to implement 2003 Iowa Acts, House File 677.

[Filed 10/14/03, effective 12/17/03]

[Published 11/12/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/12/03.

ARC 2931B
EDUCATIONAL EXAMINERS
BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

These amendments set forth procedures to combine the elementary and secondary principal endorsements to allow a person to obtain the endorsement authorizing the person to serve as an elementary or secondary principal without regard to the grade level at which the person accrued teaching experience. The amendments also include competencies for the supervisor of special education to allow a PK-12 administrator to serve also as a supervisor of special education. These amendments, in part, are intended to implement 2003 Iowa Acts, House File 549, which amends Iowa Code section 272.2.

The current subrule for an elementary principal endorsement was used as a foundation for the amendments. Therefore, the current subrule for a secondary principal endorsement is rescinded.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 6, 2003, as **ARC 2669B**. A public hearing on the amendments was held on September 9, 2003. No one attended the public hearing. One written comment was received and presented to the Board for discussion. The Board voted to adopt the amendments as published under Notice, with no changes.

These amendments are intended to implement Iowa Code chapter 272 as amended by 2003 Iowa Acts, House File 549.

These amendments will become effective December 17, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [14.142(1), 14.142(2)] is being omitted. These amendments are identical to those published under Notice as **ARC 2669B**, IAB 8/6/03.

[Filed 10/24/03, effective 12/17/03]
 [Published 11/12/03]

[For replacement pages for IAC, see IAC Supplement 11/12/03.]

ARC 2930B
EDUCATIONAL EXAMINERS
BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 22, "Paraeducator Certificates," Iowa Administrative Code.

These amendments modify the requirements for the paraeducator certificate and add a new area of concentration. The amendment to subrule 22.6(5) clarifies that paraeducators need to complete competencies in the areas of reading, writing and mathematics. The amendment to subrule 22.7(2)

strikes the phrase "in the instruction of students." Subrule 22.7(5) adds a new area of concentration, School Library Media—PK-grade 12. The amendment to subrule 22.13(1) expands the options for renewal requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 20, 2003, as **ARC 2715B**. A public hearing on the amendments was held on September 24, 2003. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective December 17, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [22.6(5), 22.7(2), 22.7(5), 22.13(1)] is being omitted. These amendments are identical to those published under Notice as **ARC 2715B**, IAB 8/20/03.

[Filed 10/24/03, effective 12/17/03]
 [Published 11/12/03]

[For replacement pages for IAC, see IAC Supplement 11/12/03.]

ARC 2922B
EMERGENCY MANAGEMENT
DIVISION[605]

Adopted and Filed

Pursuant to the authority of Iowa Code section 29C.8, the Emergency Management Division hereby amends Chapter 7, "Local Emergency Management," Iowa Administrative Code.

The rules in Chapter 7 describe the organization, duties and responsibilities of local emergency management commissions.

This amendment implements changes in the countywide comprehensive emergency operations planning requirements for local emergency management commissions by setting forth a specific date for meeting the planning requirements and refining processes for the review and amendment of these plans.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 3, 2003, as **ARC 2737B**. In addition, this amendment was simultaneously Adopted and Filed Emergency as **ARC 2738B**.

A public hearing was conducted on September 24, 2003. No comments were received in writing or at the public hearing. This amendment is identical to that published under Notice of Intended Action.

This amendment shall become effective December 17, 2003, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

This amendment is intended to implement Iowa Code sections 29C.8 and 29C.9.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [7.3(4)"d"] is being omitted. This amendment is identical to that published under Notice as **ARC**

EMERGENCY MANAGEMENT DIVISION[605](cont'd)

2737B and Adopted and Filed Emergency as **ARC 2738B**,
IAB 9/3/03.

[Filed 10/23/03, effective 12/17/03]
[Published 11/12/03]

[For replacement pages for IAC, see IAC Supplement
11/12/03.]

ARC 2923B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code section 459.314, the Environmental Protection Commission hereby adopts amendments to Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

These amendments implement changes to manure applicator certification provisions as required by 2003 Iowa Acts, House File 644. The amendments include updated terminology, certification fees and educational fees for confinement site and commercial manure applicators.

Pursuant to Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impracticable because the amendments are mandated by the new legislation.

These amendments are also published herein under Notice of Intended Action as **ARC 2924B** to allow for public comment.

These amendments are intended to implement 2003 Iowa Acts, House File 644.

These amendments shall become effective January 1, 2004.

The following amendments are adopted.

ITEM 1. Amend rule **567—65.1(455B)** as follows:

Amend the definition of "confinement site manure applicator" as follows:

"Confinement site manure applicator" means a person, *other than a commercial manure service or a commercial manure service representative*, who applies manure on land if the manure originates from a manure storage structure stored at a confinement site ~~other than a commercial manure applicator~~.

Further amend rule 567—65.1(455B) by adopting the following **new** definitions in alphabetical order:

"Commercial manure service" means a sole proprietor or business association engaged in the business of transporting, handling, storing, or applying manure for a fee.

"Commercial manure service representative" means a manager, employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service.

"Family member" means a person related to another person as parent, grandparent, child, grandchild, sibling, or a spouse of such related person.

"Manager" means a person who is actively involved in the operation of the service and makes management decisions in the operation of a commercial manure service.

ITEM 2. Amend rule 567—65.19(455B) as follows:

567—65.19(455B) Manure applicators certification.

~~65.19(1) After March 2, 1999, a A commercial manure applicator service, a commercial manure service representative and or a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. A person is not required to be certified as a confinement site manure applicator if the person applies manure which originates from a manure storage structure which is part of a small animal feeding operation. Certification of a commercial manure applicator service representative under this rule will also satisfy the commercial license requirement under 567—Chapter 68 only as it applies to manure removal and application. Each person who operates a manure applying vehicle or equipment must be certified individually except as allowed in subrule 65.19(6) 65.19(7).~~

~~65.19(2) Certification fees Fees.~~

a. Commercial manure applicator service. Effective January 1, 2003 2004, the fee for a new or renewed certification of a service is \$200; ~~prior to that date, the fee is \$50. However, for the 2002 certification year only, the fee is \$25 for a commercial manure applicator whose expiration or renewal date includes or is between January 1 and June 30. The commercial manure service shall designate one manager for the service and shall provide the department with documentation of the designation.~~

b. Commercial manure service representative. Effective January 1, 2004, the fee for a new or renewed representative certification is \$75. The manager of a commercial manure service must be certified as a commercial manure service representative, but is exempt from paying the \$75 certification fee.

b c. Confinement site manure applicator. Effective January 1, 2003, the fee for a new or renewed certification is \$100; ~~prior to that date, the fee is \$50.~~ However, the fee is not required if all of the following apply:

(1) The person indicates that the person is a family farm member as defined in this chapter by submitting a completed form provided by the department;

(2) The person is certified as a confinement site manure applicator within one year of the date another family farm member was certified or whose certification as a confinement site manure applicator was renewed;

(3) The other family farm member certified as a confinement site manure applicator has paid the certification fee.

d. Educational fee. Effective May 30, 2003, commercial manure service representatives, managers and confinement site manure applicators shall pay an educational fee to be determined annually by the department.

e. Late fee. Renewal applications received after March 1 require that an additional \$12.50 fee be paid before the certification is renewed. An application is considered to be received on the date it is postmarked.

d f. Duplicate certificate. The fee for a duplicate certificate is \$15.

65.19(3) Certification requirements. To be certified by the department as a commercial manure service, a commercial manure service representative or a confinement site manure applicator ~~by the department~~, a person must do all of the following:

a. Apply for certification on a form provided by the department.

b. Pay the required certification fee fees set forth in subrule 65.19(2).

c. Pass the examination given by the department or, in lieu of the examination, attend continuing instruction courses as described in subrule ~~65.19(5) 65.19(6)~~.

65.19(4) Certification term, renewal and grace period.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

a. Certification term. Certification for a commercial manure applicator ~~service and commercial manure service representative~~ shall be for a period of one year and shall expire on ~~December 31~~ March 1 of each year. Certification for a confinement site manure applicator shall be for a period of three years and shall expire on December 31 of the third year. After June 30, 2001, the expiration dates of all ~~confinement site manure applicator~~ certifications that currently expire on a date other than December 31 are automatically extended to December 31 of the year the certification expires.

b. Renewal. *Application for renewal of a commercial manure service certification or a commercial manure service representative certification must be received by the department no later than March 1 of the year the certification expires.* Application for renewal of a ~~confinement site manure applicator~~ certification must be received by the department or postmarked no later than March 1 after the year the certification expires. Application shall be on forms provided by the department and shall include:

(1) Certification renewal ~~fee and educational fees.~~

(2) A passing grade on the certification examination or proof of attending the required hours of continuing instructional courses.

c. *Substitution of employees. If a commercial manure service pays the certification fee for a representative, the service may substitute representatives. The substituted representative must be certified pursuant to 65.19(3). The service shall provide documentation to the department, on forms provided by the department, that the substitution is valid.*

e d. Grace period. Except as provided in this paragraph, a commercial manure applicator ~~service, a commercial manure service representative~~ or a confinement site manure applicator may not continue to apply manure after expiration of a certificate. A ~~commercial manure applicator or a confinement site manure applicator~~ may continue to apply manure until March 1 following the year the certification expires, provided a complete renewal application, as provided in paragraph "b," is postmarked or received by the department prior to March 1. *Commercial manure services and representatives must submit an application for certification renewal by March 1 of each year.*

65.19(5) Examinations.

a. ~~Persons~~ A person wishing to take the examination required to become a certified commercial manure applicator ~~service representative~~ or certified confinement site manure applicator ~~applicator~~ may request a listing of dates and locations of examinations. The applicant must have a photo identification card at the time of taking the examination.

b. If a person fails the examination, the person may ~~reap-~~ply retake the examination, but not on the same business day.

c. Upon written request by an applicant, the director will consider the presentation of an oral examination on an individual basis when the applicant has failed the written examination at least twice; and the applicant has shown difficulty in reading or understanding written questions but may be able to respond to oral questioning.

65.19(6) Continuing instruction courses in lieu of examination.

a. To establish or maintain certification ~~and license, between March 1 and March 1 of the next year,~~ a commercial manure applicator ~~service representative~~ must each year either pass an examination or attend three hours of continuing instructional courses.

b. To establish or maintain certification, a confinement site manure applicator must either pass an examination every

three years or attend two hours of continuing instructional courses each year.

65.19(7) Exemption from certification.

a. Certification as a commercial manure applicator ~~service representative~~ is not required of a person who is any of the following:

(1) Actively engaged in farming *and* who trades work with another such person.

(2) Employed by a person actively engaged in farming not solely as a manure applicator *but* who applies manure as an incidental part of the person's general duties.

(3) Engaged in applying manure as an incidental part of a custom farming operation.

(4) Engaged in applying manure as an incidental part of a the person's duties.

(5) Applying, *transporting, handling or storing* manure within a period of 30 days from the date of initial employment as a commercial manure applicator ~~service representative~~ if the person applying the manure is acting under direct instructions and control of a certified commercial manure applicator ~~service representative~~ who is physically present at the manure application site by being in sight or ~~hearing immediate communication~~ distance of the supervised person where the certified commercial applicator ~~service representative~~ can physically observe and communicate with the supervised person at all times.

(6) Employed by a research college to apply manure from animal feeding operations that are part of the research activities or experiments of the research college.

b. No change.

65.19(8) Certified commercial manure applicators ~~services~~ have the following obligations:

a. No change.

b. Comply with the provisions of the manure management plan (MMP) prepared for the animal feeding operation and the requirements of 65.2(455B) *and* 65.3(455B). If a manure management plan does not exist, the requirements of 65.2(455B) *and* 65.3(455B) must still be met.

c. and d. No change.

e. Any vehicle used by a certified commercial manure applicator ~~service or commercial manure service representative~~ to transport manure on a public road shall display the certification/license number(s) of the certified applicator ~~commercial manure service~~ with three-inch or larger letters and numbers on the side of the tank or vehicle. The name and address of the certified commercial manure applicator ~~service representative designated as the manager~~ shall also be prominently displayed on the side of the tank or vehicle.

f. No change.

65.19(9) Discipline of certified applicators.

a. Disciplinary action may be taken against a certified commercial manure applicator ~~service, a commercial manure service representative or a confinement site manure applicator~~ on any of the following grounds:

(1) Violation of state law or rules applicable to a certified commercial manure applicator ~~service, a commercial manure service representative, or a confinement site manure applicator~~ or the handling or application of manure.

(2) Failure to maintain required records of manure application or other reports required by this rule.

(3) Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the department.

b. and c. No change.

65.19(10) Revocation of certificates.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

a. Upon revocation of a certificate, application for *commercial manure service representative or confinement site applicator* certification may be allowed after two years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

b. Upon revocation of a certificate, application for a *commercial manure service certification* may be allowed after three years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

65.19(11) Record inspection. The department may inspect, with reasonable notice, the records maintained by a commercial ~~applicator~~ *manure service*. If the records are for an operation required to maintain records to demonstrate compliance with a manure management plan, the confidentiality provisions of subrule 65.17(14) and Iowa Code section ~~455B.203~~ *459.312* shall extend to the records maintained by the ~~applicator~~ *commercial manure service*.

[Filed Without Notice 10/23/03, effective 1/1/04]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/12/03.

ARC 2925B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.304(1) and 455D.7(1), the Environmental Protection Commission hereby adopts amendments to Chapter 117, "Waste Tire Management," Iowa Administrative Code.

These amendments reference appropriate statutory authority for enforcement actions and penalties in accordance with provisions of Chapter 117. Enforcement authority for noncompliance with solid waste regulations is contained within Iowa Code chapter 455B. Therefore, these amendments add references to Iowa Code chapter 455B as needed. These amendments will provide greater effectiveness, clarity, and consistency with legislative intent and statutory authority for waste tire management and regulation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 20, 2003, as **ARC 2717B**. A public hearing was held on September 10, 2003. No oral or written comments were received. These amendments have not been modified from those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 455B.301 to 455B.307 and 455D.11 to 455D.11H.

These amendments will become effective December 17, 2003.

The following amendments are adopted.

ITEM 1. Amend rules **567—117.1(455D)** to **567—117.8(455D)**, parenthetical implementation, as follows: (455B,455D)

ITEM 2. Amend **567—Chapter 117**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 455B.301 to 455B.307 and 455D.11 to 455D.11H.

[Filed 10/23/03, effective 12/17/03]
[Published 11/12/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/12/03.

ARC 2920B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 514I.5, subsection 8, the Department of Human Services amends Chapter 1, "Departmental Organization and Procedures," Iowa Administrative Code.

These amendments:

- Change the meeting schedule for the HAWK-I Board to conform to changes made by 2003 Iowa Acts, House File 565.
- Update organizational references to the Department division providing staff support to the Board.

These amendments were Adopted and Filed Emergency and published in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2612B**. Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2607B**. The Department received no comments. These amendments are identical to the Notice of Intended Action.

These amendments do not provide for waivers because these are technical changes.

The HAWK-I Board adopted these amendments on October 20, 2003.

These amendments are intended to implement Iowa Code section 514I.5, subsection 1, as amended by 2003 Iowa Acts, House File 565, section 2.

These amendments will become effective January 1, 2004, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

Amend rule 441—1.10(17A) as follows:

Amend the introductory paragraph as follows:

441—1.10(17A,514I) HAWK-I board. The director of the department has, by statute, the advice and counsel of the HAWK-I board on the healthy and well ~~children~~ *kids* in Iowa program. This seven-member board consists of the commissioner of insurance or the commissioner's designee, the director of the department of education or the director's designee, the director of the department of public health or the director's designee, and four public members appointed by the governor, subject to confirmation by two-thirds of the members of the senate. The board shall also include two members of the senate and two members of the house of representatives, serving as ex officio members.

Amend subrule 1.10(2), introductory paragraph, as follows:

1.10(2) Duties and powers of the board. The board's powers and duties are to make policy and to provide direction for the administration of all aspects of the healthy and well kids in Iowa program which is administered by the division of

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~medical services financial, health and work supports.~~ In carrying out these duties, the board shall do all of the following:

Amend subrule **1.10(4)**, paragraph **“b,”** as follows:

b. Copies of the minutes are kept on file in the office of the administrator of the division of ~~medical services financial, health and work supports.~~

Amend subrule **1.10(5)**, paragraphs **“a”** and **“b,”** as follows:

a. The board shall meet at regular intervals at least ~~ten~~ six times each year and may hold special meetings at the call of the chairperson or at the request of a majority of the voting members, *but no more than twelve times per year.*

b. Any person wishing to make a presentation at a board meeting shall notify the Administrator, Division of ~~Medical Services Financial, Health and Work Supports,~~ Department of Human Services, ~~Hoover State Office Building, 1305 E. Walnut Street,~~ Des Moines, Iowa 50309-0114, telephone (515)281-8794 6080, at least 15 days ~~prior to~~ before the board meeting.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code ~~paragraph sections 17A.3(1)“a” and 1998 Iowa Acts, chapter 1196, section 6 514I.5.~~

[Filed 10/23/03, effective 1/1/04]

[Published 11/12/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/12/03.

ARC 2921B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 514I.5, subsection 8, the Department of Human Services amends Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Iowa Administrative Code.

These amendments eliminate the six-month waiting period under the HAWK-I program for children who previously had employer-sponsored health care coverage, as mandated by 2003 Iowa Acts, House File 565. The amendments rescind the paragraph specifying circumstances when a child could qualify as “uninsured” during the waiting period and the paragraph requiring the third-party administrator to track waiting periods for applicants. These changes allow families to transition from employer-sponsored health care coverage to the HAWK-I program without a break in coverage.

Currently, families who voluntarily drop employer-sponsored health care coverage that costs less than 5 percent of their gross annual income are subject to a six-month waiting period. The waiting period was implemented as a “crowd out” provision, to deter families from dropping employer-sponsored health care to obtain government-sponsored health care. There have been no indications that “crowd out” is occurring in Iowa. Only two appeals have been filed on this issue in the four years that the program has operated. Federal regulations do not require a “crowd out” provision for states that cover families with income up to 200 percent of the federal poverty guidelines.

These amendments were Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2611B**. Notice of Intended Action on

these amendments was published in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2608B**. The Department received no comments. These amendments are identical to the Notice of Intended Action.

These amendments do not provide for waivers in specified situations because they confer a benefit on affected families. The legislation requires the Department to track and report to the General Assembly any increases in program costs attributable to these amendments during state fiscal years 2004 and 2005.

The HAWK-I Board adopted these amendments October 20, 2003.

These amendments are intended to implement Iowa Code sections 514I.5(8) and 514I.8(2) as amended by 2003 Iowa Acts, House File 565, sections 7 and 11.

These amendments shall become effective January 1, 2004, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule **86.2(4)** by rescinding and reserving paragraph **“b.”**

ITEM 2. Amend subrule **86.13(6)** by rescinding and reserving paragraph **“e.”**

[Filed 10/23/03, effective 1/1/04]

[Published 11/12/03]

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ARC 2944B

LAW ENFORCEMENT ACADEMY[501]

Adopted and Filed

Pursuant to the authority of Iowa Code section 80B.11, the Iowa Law Enforcement Academy, with approval of the Iowa Law Enforcement Academy Council, hereby amends Chapter 3, “Certification of Law Enforcement Officers,” Iowa Administrative Code.

2003 Iowa Acts, Senate File 352, and Senate File 453, were passed during the first Session of the 80th Iowa General Assembly and signed into law by Governor Vilsack on April 25 and May 30, 2003, respectively. The new Iowa Code sections 80B.11D and 80B.11E created by 2003 Iowa Acts, Senate Files 352 and 453, allow persons who are not certified as law enforcement officers to apply for attendance at a short course of study at an approved law enforcement training program or at the Iowa Law Enforcement Academy if such persons are sponsored by a law enforcement agency.

Rule 501—3.12(80B) was presented to the Iowa Law Enforcement Academy Council for review and approval on June 5, 2003. The Council approved the proposed rule, which was published under Notice of Intended Action in the July 9, 2003, Iowa Administrative Bulletin as **ARC 2562B**. In addition, this rule was simultaneously Adopted and Filed Emergency as **ARC 2561B**.

A public hearing was held on July 29, 2003. A meeting with all community colleges was held on September 4, 2003. A letter outlining additional concerns was received from Western Iowa Technical Community College on September 18, 2003. A meeting with the various Iowa law enforcement associations was held on September 26, 2003, to discuss the

LAW ENFORCEMENT ACADEMY[501](cont'd)

concerns expressed by Western Iowa Technical Community College. An additional meeting was held with Western Iowa Technical Community College and Hawkeye Technical Community College on September 30, 2003.

Following is a summary of the concerns expressed and of the changes made to rule 501—3.12(80B) in response to those concerns:

The community colleges believed that the length of time by which a person must submit the application to the Iowa Law Enforcement Academy before attending training was too long. The length of time was changed to 30 days if the hiring standards are conducted by the sponsoring agency and 60 days if the hiring standards are conducted by the Iowa Law Enforcement Academy. The community colleges requested that the rule provide guidance on payment of fees for the short course of study. This guidance has been added.

Concerns were expressed about requiring more information in a background investigation for sponsored individuals than is required for hired officers. The rule was changed to require the same information in a background investigation for sponsored individuals as is required for hired officers. The rule originally required that a copy of the graduation certificate be submitted as proof of graduation. Because a graduation certificate is not available immediately upon a person's graduation, it was agreed that the proof must instead include a letter from the registrar certifying the person's graduation 30 days in advance of the course of study that the person plans to attend.

The rule was changed to require that the MMPI and POST testing must be reverified if the individual is not hired or placed upon a civil service certified list within the first 12 months following completion of the course of study. Placement upon a civil service certified list was not included in the original rule.

The rule was changed to provide that firearms qualification with the hiring agency's weapon and ammunition would be conducted under the direction of an instructor certified in firearms by the Iowa Law Enforcement Academy. This will allow the individual to be qualified without returning to the Iowa Law Enforcement Academy.

The rule was changed to provide that, if the individual is not employed within a 12-month period after completing the basic training at the Iowa Law Enforcement Academy or at a short course of study at an approved law enforcement training program, the individual will be required to retake the required training for Iowa Law Enforcement Care Provider, implied consent, and standardized field sobriety testing. The training may be obtained at the Iowa Law Enforcement Academy or an approved law enforcement training program.

The revised rule was presented to and adopted by the Iowa Law Enforcement Academy Council at its October 2, 2003, meeting. Representatives from Western Iowa Technical Community College were present at this Council meeting and reported that they were in agreement with the changes.

This rule is intended to implement 2003 Iowa Acts, Senate Files 352 and 453.

This rule shall become effective December 17, 2003, at which time the Adopted and Filed Emergency rule is hereby rescinded.

The following amendment is adopted.

Amend 501—Chapter 3 by adopting the following **new** rule:

501—3.12(80B) Training of an individual who intends to become certified as a law enforcement officer.

3.12(1) An individual who has not yet been hired or started employment as an Iowa sworn peace officer may apply for attendance at the Iowa law enforcement academy (ILEA) or, if qualified as provided for in 501—subrule 3.4(1), at a short course of study at an approved law enforcement training program if such individual is sponsored by an Iowa law enforcement agency.

a. The individual must submit an application packet approved and provided by the Iowa law enforcement academy at least 30 days in advance of the course of study that the person wants to attend if the hiring standards are conducted by a sponsoring agency and at least 60 days in advance of the course of study that the person wants to attend if the hiring standards are conducted by ILEA. An administrative fee, to be established by the academy, shall accompany the application packet.

b. The sponsoring Iowa law enforcement agency must certify that the agency intends to hire within the next 18 months or has hired the individual as a law enforcement officer.

c. The fees to attend the Iowa law enforcement academy will be collected as follows:

(1) 25 percent at the time position in class is reserved. (This fee is nonrefundable.)

(2) 25 percent on first day of the academy class.

(3) The remaining amount to reach full payment of all ILEA training fees must be received by the end of the fourth week or the individual will be dismissed from the academy.

d. The fees to attend a short course of study at an approved law enforcement training program will be collected as determined by that entity.

3.12(2) Hiring standards. An individual who files an application under subrule 3.12(1) must meet all hiring standards as established by the academy in rules 501—2.1(80B) and 501—2.2(80B).

a. The sponsoring law enforcement agency may conduct required testing including medical/psychological/cognitive examinations, thorough background investigation and other matters as required by rules 501—2.1(80B) and 501—2.2(80B). The sponsoring law enforcement agency that conducts the required testing must certify that all hiring standards have been met and submit proof of the same as required by Iowa law enforcement academy administrative rules and on forms provided by the academy.

b. The academy shall conduct the required testing including medical/psychological/cognitive examinations, thorough background investigation and other matters as required by rules 501—2.1(80B) and 501—2.2(80B) if the sponsoring agency has not done so. The academy will establish fees for conducting the hiring standards requirements, including the background check, to be paid by the individual filing the application. The fees must be paid before the testing occurs.

3.12(3) Application for a short course of study at an approved law enforcement training program. An individual applying for attendance at a short course of study at an approved law enforcement training program shall submit proof of successful completion of a two-year or four-year police science or criminal justice program at an accredited educational institution in this state as approved by the academy. The proof must include a letter from the registrar certifying the person's graduation and a certified transcript of courses taken and grades received. The proof must be submitted 30 days in advance of the course of study that the person wants to attend.

LAW ENFORCEMENT ACADEMY[501](cont'd)

3.12(4) Permission to attend. An individual shall not be granted permission to attend an approved law enforcement training program if such acceptance would result in the non-acceptance of another qualifying applicant who is a law enforcement officer.

3.12(5) Certification. The academy will not grant certification until an individual is employed by an Iowa law enforcement agency and has met required hiring standards and successfully completed certification testing.

a. The following hiring standards must be reverified if the individual is not hired by an Iowa law enforcement agency during the first 12 months following completion of the course of study.

(1) The Iowa law enforcement academy evaluations of the Minnesota Multiphasic Personality Inventory (MMPI) may be used only for 12 months to comply with this rule. Any individual who has not been hired or placed upon a civil service certified list within the first 12 months following completion of the course of study must retake the MMPI and, before the individual is certified, the results of the MMPI must be approved by the hiring authority.

(2) Standard & Associates' National Police Officer Selection Test (POST) test scores shall be valid for a period of 12 months from the date of completion of the course of study. An individual who has not been hired or placed upon a civil service certified list within 12 months must retake and successfully pass the examination before being certified.

(3) The individual must be examined by a licensed physician or surgeon and meet the physical requirements necessary to fulfill the responsibilities of a law enforcement officer.

(4) The individual must successfully pass a physical test adopted by the Iowa law enforcement academy.

b. An individual may be certified in the following areas only after being employed by an Iowa law enforcement agency:

- (1) Iowa Law Enforcement Emergency Care Provider.
- (2) Implied consent.
- (3) Standardized field sobriety testing.
- (4) Firearms qualification with the hiring agency's weapon and ammunition.

Certification will be awarded in the above areas if the individual is employed by an Iowa law enforcement agency within the first 12 months following completion of the basic training course of study and when the following requirements are met. All individuals, once employed by an Iowa law enforcement agency, must undergo testing in the firearms qualifications with the hiring agency's weapon and ammunition at the direction of an instructor certified in firearms by the Iowa law enforcement academy. Documentation of this testing and scores must be submitted to the Iowa law enforcement academy. The individual will be certified upon successful completion of the firearms qualification and review of the testing results completed during training at the Iowa law enforcement academy or at a short course of study at an approved law enforcement training program.

If the individual is not employed within a 12-month period after completing basic training at the Iowa law enforcement academy or at a short course of study at an approved law enforcement training program, the individual will be required to retake the required training for Iowa Law Enforcement Emergency Care Provider, implied consent, and standardized field sobriety testing. Successful completion and documentation of this training must be submitted to the Iowa law enforcement academy before certification can be granted.

3.12(6) Employment within 18 months. The individual must be employed by an Iowa law enforcement agency with-

in 18 months of completion of the course of study in order to receive certification. An individual shall not be certified under rule 501—3.12(80B) if the individual is not employed by an Iowa law enforcement agency within 18 months of completion of the course of study.

This rule is intended to implement 2003 Iowa Acts, Senate Files 352 and 453.

[Filed 10/24/03, effective 12/17/03]

[Published 11/12/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/12/03.

ARC 2941B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue hereby amends Chapter 5, "Public Records and Fair Information Practices," Chapter 43, "Assessments and Refunds," Chapter 49, "Estimated Income Tax for Individuals," Chapter 67, "Administration," and Chapter 150, "Offset of Debts Owed State Agencies," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVI, No. 6, p. 489, on September 17, 2003, as **ARC 2767B**.

Item 1 amends subrule 5.14(4) by changing a number of the subrule's statutory references from Iowa Code section 421.17 to 2003 Iowa Acts, House File 534, section 86 [new Iowa Code section 8A.504(2)].

Item 2 amends subrule 43.3(3) to reflect the fact that the Department's previous duties to offset debts assigned to the Department of Human Services for collection, to offset debts resulting from defaults on guaranteed student or parental loans, and to offset debts owed to Iowa district courts have been transferred from the Department to the newly created Department of Administrative Services.

Item 3 amends rule 701—49.7(422), which deals with the offsetting of individual income tax carryforwards. The rule is amended to change references from the Department to the Department of Administrative Services when duties regarding offsets have been transferred to that agency. The rule is also amended to specifically mention one duty of setoff which remains with the Department of Revenue.

Item 4 amends rule 701—67.22(452A) to remove a chapter reference which is no longer accurate and a reference to a session law which is no longer relevant.

Item 5 extensively amends Chapter 150. Rules 701—150.1(421) through 701—150.16(421) are rescinded because the duties of offsetting debts which those rules describe have been transferred to the Department of Administrative Services. The duties to offset, which existing rule 701—150.17(421,PL105-206) describes, remain with the Department. That rule is renumbered to become the whole of Chapter 150. The title of Chapter 150 is also amended.

The amendments are necessitated by recent legislation which removes the words "and finance" from the Department's name and transfers a number of the Department's financing duties to the newly created Department of Administrative Services.

These amendments are identical to those published as Notice of Intended Action.

REVENUE DEPARTMENT[701](cont'd)

These amendments will become effective December 17, 2003, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement 2003 Iowa Acts, House File 534, sections 86, 254, and 291.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [5.14(4), 43.3(3) to 43.3(5), 49.7(3), 67.22, 150.1 to 150.17] is being omitted. These amendments are identical to those published under Notice as **ARC 2767B**, IAB 9/17/03.

[Filed 10/24/03, effective 12/17/03]
[Published 11/12/03]

[For replacement pages for IAC, see IAC Supplement 11/12/03.]

ARC 2942B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue hereby amends Chapter 42, "Adjustments to Computed Tax," and Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVI, No. 6, p. 492, on September 17, 2003, as **ARC 2769B**.

Item 1 amends subrule 42.2(10) to eliminate the requirement, for tax years beginning on or after July 1, 2003, that eligible businesses whose projects primarily involve the production of value-added agricultural products only include co-operatives primarily involved in the production of ethanol.

Item 2 updates an implementation clause.

Item 3 amends subrule 52.10(4) to eliminate the requirement, for tax years beginning on or after July 1, 2003, that eligible businesses whose projects primarily involve the production of value-added agricultural products only include co-operatives primarily involved in the production of ethanol. This is similar to the change in Item 1.

Item 4 amends rule 52.14(422) to provide that eligible businesses in enterprise zones may be subject to repayment of tax credits previously taken if the business experiences a layoff or closes facilities within Iowa.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective December 17, 2003, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code section 15.333 as amended by 2003 Iowa Acts, House File 681, and section 15E.193 as amended by 2003 Iowa Acts, House File 576.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [42.2(10), 52.10(4), 52.14] is being

omitted. These amendments are identical to those published under Notice as **ARC 2769B**, IAB 9/17/03.

[Filed 10/24/03, effective 12/17/03]
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[For replacement pages for IAC, see IAC Supplement 11/12/03.]

ARC 2940B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue hereby amends Chapter 42, "Adjustments to Computed Tax," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXVI, No. 6, p. 494, on September 17, 2003, as **ARC 2768B**.

Item 1 amends rule 42.13(15E) to provide that tax credit certificates must be issued to individuals who qualify for the eligible housing business tax credit and to provide for the transferability of the eligible housing business tax credit for individual income tax.

Item 2 amends subrule 42.15(4) to include in the tax credit certificate issued to individuals a place for the name and tax identification number of the transferee and amount of the tax credit transferred if the property rehabilitation tax credit is transferred.

Item 3 adopts new subrule 42.15(6) to provide that the property rehabilitation tax credit can be transferred for individual income tax.

Item 4 amends rule 52.15(15E) to provide that tax credit certificates must be issued to corporations that qualify for the eligible housing business tax credit and to provide for the transferability of the eligible housing business tax credit for corporation income tax purposes.

Item 5 amends subrule 52.18(4) to include in the tax credit certificate issued to corporations a place for the name and tax identification number of the transferee and amount of the tax credit transferred if the property rehabilitation tax credit is transferred.

Item 6 adopts new subrule 52.18(6) to provide that the property rehabilitation tax credit may be transferred for corporation income tax.

Item 7 amends rule 58.8(15E) to provide that tax credit certificates must be issued to financial institutions that qualify for the eligible housing business tax credit and to provide for the transferability of the eligible housing business tax credit for franchise tax purposes.

Item 8 amends rule 58.10(422) to reference the transfer of the property rehabilitation tax credit.

Minor changes have been made to the Notice of Intended Action. In Items 1 and 4, the citation "1998 Iowa Acts, chapter 1179" was changed to "Iowa Code section 15E.193B" wherever it appears. In addition, in Item 7, a citation to 2003 Iowa Acts, Senate File 441, was added in two instances.

These amendments will become effective December 17, 2003, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

REVENUE DEPARTMENT[701](cont'd)

These amendments are intended to implement Iowa Code sections 15E.193B and 404A.4 as amended by 2003 Iowa Acts, Senate File 441.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [42.13, 42.15(4), 42.15(6), 52.15, 52.18(4), 52.18(6), 58.8, 58.10] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 2768B**, IAB 9/17/03.

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[Published 11/12/03]

[For replacement pages for IAC, see IAC Supplement 11/12/03.]

ARC 2943B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14, 421.17(19), and 426A.7, the Department of Revenue hereby adopts amendments to Chapter 78, "Property Tax Exemptions," and Chapter 80, "Property Tax Credits and Exemptions," Iowa Administrative Code.

The amendments incorporate the provisions of 2003 Iowa Acts, House Files 665 and 674, and Senate Files 94 and 453.

Item 1 amends subrule 78.6(1) to require that property leased to others by the Department of Corrections and the Department of Human Services be subject to taxation.

Item 2 amends an implementation clause.

Item 3 amends paragraph 80.2(2)"c" to permit former members of the armed forces of the United States who opted to serve five years in the reserve forces of the United States to be eligible for the military service property tax exemption if any portion of their term of enlistment would have occurred during the Korean Conflict (June 25, 1950, to January 31, 1955).

Item 4 amends subrule 80.2(2) to require the person claiming the military service property tax exemption to record the veteran's military certificate of satisfactory service and evidence that the claimant owns the property on which the exemption is claimed. It also provides that the military certificate of satisfactory service is a confidential record.

Item 5 amends a parenthetical implementation statute and an implementation clause.

Item 6 amends paragraph 80.7(8)"b" to provide that state reimbursement for property tax revenue lost by counties from the phase-out of the tax on industrial machinery, equipment, and computers will end with the 2004 rather than the 2006 fiscal year (two years earlier than scheduled).

Item 7 amends an implementation clause.

Notice of Intended Action was published in IAB Vol. XXVI, No. 6, p. 498, on September 17, 2003, as **ARC 2766B**.

One change has been made to the amendments published under Notice of Intended Action. In Item 1, in new paragraph "c" of subrule 78.6(1), the word "property" has been changed to "land" in the first and last sentences. New paragraph "c" now reads as follows:

"c. Land owned by the state and leased by the department of corrections or the department of human services pursuant to Iowa Code section 904.302, 904.705, or 904.706 to an entity that is not exempt from property tax is subject to taxation for the term of the lease. This provision applies to leases entered into on or after July 1, 2003. The lessor shall file a copy of the lease with the county assessor of the county where the land is located."

These amendments will become effective December 17, 2003, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 22.7, 35.1, and 427.1, and Iowa Code chapters 426A and 427B as amended by 2003 Iowa Acts, House Files 665 and 674, and Senate Files 94 and 453.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [78.6(1), 80.2, 80.2(2), 80.7(8)"b"] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 2766B**, IAB 9/17/03.

[Filed 10/24/03, effective 12/17/03]
[Published 11/12/03]

[For replacement pages for IAC, see IAC Supplement 11/12/03.]

ARC 2939B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 47.1, 50.11 and 52.41, the Secretary of State hereby amends Chapter 22, "Alternative Voting Systems," Iowa Administrative Code.

Items 1 and 5 are intended to implement Iowa Code sections 50.11 and 52.41, which require the State Commissioner of Elections (Secretary of State) to promulgate rules regarding the electronic transmission of election results and to adopt the standards for examination and testing of devices for the electronic transmission of election results. Items 2 and 4 update rule 721—22.1(52) and subrule 22.5(3) to conform to an earlier amendment to rule 721—22.2(52), incorporating new voting system standards into these rules. Item 3 simply corrects subrule 22.3(3) to reflect the current mailing address of the Secretary of State's office.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 23, 2003, as **ARC 2640B**. Two changes have been made to new subrule 22.30(1), which pertains to certification of equipment. This subrule has been changed to provide the board of examiners with discretion to decline to approve transmission components if the board does not agree with the findings of the independent test authority regarding the equipment's compliance with the voting system standards. Also, the October 22, 2003, date referenced in the subrule has been changed to December 17, 2003, to coincide with the effective date of these amendments.

The Secretary of State adopted these amendments on October 23, 2003.

These amendments shall become effective on December 17, 2003.

SECRETARY OF STATE[721](cont'd)

These amendments are intended to implement Iowa Code sections 50.11 and 52.41.

The following amendments are adopted.

ITEM 1. Amend rule **721—22.1(52)** by adding the following **new** definition in alphabetical order:

“Electronic transmission” means using hardware and software components to send data over distances both within and external to the polling place and to receive an accurate copy of the transmission.

ITEM 2. Amend rule **721—22.1(52)**, definition of “qualification test,” as follows:

“Qualification test” means the examination and testing of an electronic voting system by an independent test authority using ~~Performance and Test Standards for Punchcard, Marksense, and Director Recording Electronic Systems, as adopted by the Federal Election Commission January 25, 1990, and as amended April 1990, the voting system standards required by rule 721—22.2(52)~~ to determine if whether the system complies with those standards.

ITEM 3. Amend subrule 22.3(3) as follows:

22.3(3) Correspondence and materials required to be filed with the board of examiners shall be addressed to the examiners in care of the Elections Division, Office of the Secretary of State, ~~Second Floor, Hoover Building, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319.~~

ITEM 4. Amend subrule 22.5(3) to read as follows:

22.5(3) Report of an accredited independent test authority certifying that the system is in compliance with the ~~Federal Election Commission’s Performance and Test Standards for Punchcard, Marksense, and Direct Recording Electronic Systems~~ *voting systems standards required by rule 721—22.2(52)*. Copies of these reports are confidential records as defined by Iowa Code section 22.7 and Iowa Code chapter 550. Independent test authority reports shall be available to the secretary of state, deputy secretary of state, director of elections, *members of the board of examiners*, and any other person designated by the secretary of state to have a bona fide need to review the report. No other person shall have access to the reports, and no copies shall be made. All independent test authority reports shall be marked “CONFIDENTIAL” and shall also be accompanied by a list of those persons who are authorized to examine the report. The reports shall be kept in a locked cabinet.

ITEM 5. Adopt the following **new** rule:

721—22.30(50.52) Electronic transmission of election results.

22.30(1) Certification of equipment. On or after December 17, 2003, new components for transmission of election results by any electronic means may be used in elections in Iowa only if the components are approved by the board of examiners for use with a certified voting system. Existing systems containing electronic transmission components in use before December 17, 2003, may continue to be used until January 1, 2006, when the Help America Vote Act voting system requirements become effective.

The examiners shall review the qualification test report submitted with the application for examination and testing of the voting system. If the test report for the voting system under examination shows that the electronic transmission components have met the voting system standards and the examiners concur, the electronic transmission components may be used in conjunction with the voting system. If the qualification test report or the examiners conclude that the electron-

ic transmission components do not meet the voting system standards, or if this feature is not mentioned in the report, purchasers of the voting system may not transmit election results electronically.

22.30(2) Procedures on election day. The election results may be transmitted electronically from voting equipment to the county commissioner of elections’ office only after the precinct election officials have produced a written report of the election results as required by Iowa Code section 50.11. All election officials of the precinct shall sign the printed report of the election results. The signed copy shall be the official tabulation from that precinct.

22.30(3) Procedures after election day. Before the canvass by the board of supervisors, the county commissioner of elections shall compare the signed, printed report from each precinct with the results transmitted electronically from the precinct on election night. The commissioner shall report any discrepancies between the two sets of election results to the board of supervisors. The signed, printed results produced pursuant to Iowa Code section 50.11 shall be considered the correct results.

This rule is intended to implement Iowa Code sections 50.11 and 52.41.

[Filed 10/24/03, effective 12/17/03]

[Published 11/12/03]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/12/03.

ARC 2928B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State hereby adopts Chapter 25, “Election Administration—Administrative Complaint Procedure,” Iowa Administrative Code.

The purpose of Chapter 25 is to set forth an administrative complaint procedure to comply with Title IV, Section 402, of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15512. The procedure shall be available to any person who believes that a violation of any provision of Title III of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15481-15485, has occurred, is occurring, or is about to occur in connection with a federal election.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 11, 2003, as **ARC 2539B**. No comments were received from the public. These rules are identical to those published under Notice of Intended Action.

These rules were adopted on October 24, 2003.

These rules are intended to implement Public Law 107-252 Section 402(a)(1) and 42 U.S.C. 15512(a)(1).

These rules shall become effective on December 17, 2003.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of

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these rules [Ch 25] is being omitted. These rules are identical to those published under Notice as **ARC 2539B**, IAB 6/11/03.

[Filed 10/24/03, effective 12/17/03]
[Published 11/12/03]

[For replacement pages for IAC, see IAC Supplement 11/12/03.]

ARC 2932B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 476.1, 476.1A, 476.1B, 476.1C, 476.2, 476.4, 476.6, and 17A.4, on October 23, 2003, the Utilities Board (Board) issued an order in Docket No. RMU-03-1, In re: Executive Orders No. 8 and 9 Required Revisions to Chapters 19, 20, 21, 35, and 36, "Order Adopting Amendments."

The amendments were prepared to update, clarify, and revise the specified Board rules based upon the criteria set out in the Executive Orders. Notice of Intended Action was published in IAB Vol. XXV, No. 16, (2/5/03) pp. 1069-79, as **ARC 2284B**.

Comments were filed by the Iowa Association of Electric Cooperatives (IAEC), Consumer Advocate Division of the Department of Justice (Consumer Advocate), MidAmerican Energy Company (MidAmerican), and Interstate Power and Light Company (IPL). In its comments, MidAmerican requested that the Board schedule an oral presentation to allow MidAmerican to present additional comments to the Board. The Board issued an Amended Notice of Intended Action that was published in IAB Vol. XXV, No. 20, (4/2/03) p. 1338, as **ARC 2387B**, scheduling an oral presentation for May 9, 2003.

The Board reviewed the written comments and the oral comments made at the oral presentation and is adopting the amendments with some revisions based upon those comments. The Board's order provides detailed analysis of the amendments and the public comments received. It is available on the Board's Web site at www.state.ia.us/iub or on paper from the Board's Records Center at 350 Maple Street, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code sections 476.1, 476.1A, 476.1B, 476.1C, 476.2, 476.6, and 17A.4.

These amendments will become effective on December 17, 2003.

The following amendments are adopted.

ITEM 1. Amend rule 199—19.1(476) as follows:

Amend subrules 19.1(1) and 19.1(2) as follows:

19.1(1) Authorization of rules. Iowa Code chapter 476 provides that the Iowa utilities board shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, contents and filing of reports, documents and other papers necessary to carry out the provisions of this law.

~~Chapter~~ *Iowa Code chapter 479* provides that the Iowa utilities board shall have full authority and power to promulgate rules as it deems proper and expedient in the supervision of the transportation or transmission and underground storage of gas within the state of Iowa.

The application of the rules in this chapter to municipally owned utilities furnishing gas is limited by Iowa Code section 476.1B.

19.1(2) Application of rules. The rules shall apply to any gas utility operating within the state of Iowa as defined in *Iowa Code* chapter 476 and shall supersede ~~all rules any tariff~~ on file with this board which *are is* in conflict with these rules. These rules are intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities. ~~If unreasonable hardship to a utility or to a customer results from the application of any rule herein prescribed, application may be made to the board for the modification of the rule or for temporary or permanent exemption from its requirements. A request to waive the application of any rule on a permanent or temporary basis may be made in accordance with rule 199—1.3(17A,474,476,78GA,HF2206).~~ The adoption of these rules shall in no way preclude the board from altering or amending them, pursuant to statute, or from making such modifications with respect to their application as may be found necessary to meet exceptional conditions. These regulations shall in no way relieve any utility from any of its duties under the laws of this state.

Amend subrule **19.1(3)**, definitions of "delinquent account or delinquency" and "interruption of service," as follows:

"Delinquent" ~~account~~ or "delinquency" means ~~the customer has not paid an account for which a service bill or service payment agreement amount has not been paid~~ in full on or before the last day for timely payment.

"Interruption of service" means any disturbance of the gas supply whereby ~~the pilot flame on the appliances of at least gas service to 50 customers or more in one segment or in a portion of a distribution system shall have been extinguished cannot be maintained.~~

ITEM 2. Amend rule 199—19.2(476) as follows:

199—19.2(476) Records, reports, and tariffs.

19.2(1) No change.

19.2(2) Tariffs to be filed with the board. ~~The utility shall file its tariff with the board, and shall maintain such tariff filing in a current status.~~

The schedules of rates *and rules* of rate-regulated gas utilities ~~and rules of all utilities~~ shall be filed with the board and shall be classified, designated, arranged and submitted so as to conform to the requirements of this chapter. Provisions of the schedules shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The form, identification and content of tariffs shall be in accordance with these rules.

Utilities which are not subject to the rate regulation provided for by Iowa Code chapter 476 shall not be required to file schedules of rates, *rules*, or contracts primarily concerned with a rate schedule, with the board, but nothing contained in these rules shall be deemed to relieve any utility of the requirement of furnishing any of these same schedules or contracts which are needed by the board in the performance of the board's duties upon request to do so by the board.

19.2(3) Form and identification. All tariffs shall conform to the following rules:

a. and b. No change.

c. All sheets except the title page shall have, in addition to the above-stated requirements, the following ~~further~~ information:

UTILITIES DIVISION[199](cont'd)

(1) Name of utility under which shall be set forth the words "Filed with Board." If the utility is not a corporation, and a trade name is used, the name of the individual or partners must precede the trade name.

(2) Issuing official and issue date.

(3) Effective date (to be left blank by rate-regulated utilities).

d. No change.

19.2(4) Content of tariffs. A tariff filed with the board shall contain:

a. No change.

b. All rates of utilities subject to rate regulation for service with indication of each rate for the type of gas and the class of customers to which each rate applies. There shall also be shown the prices per unit of service, the number of units per billing period to which the prices apply, the period of billing, the minimum bill, the method of measuring demands and consumptions, including the method of calculating or estimating loads or minimums, delivery pressure, and any special terms or conditions applicable. All rates should be separated into "gas" and "nongas" components, and books and records shall be maintained on this basis. Books and records shall be available to the board for audits upon request. The gas components will be the result of the utility's ~~ARG~~ *periodic review of gas procurement practices* (rule 19.11(476)) and PGA (rule 19.10(476)) proceeding. The nongas components will be established through rate case proceedings under Iowa Code section 476.3 or 476.6. The period during which the net amount may be paid before the account becomes delinquent shall be specified. In any case where net and gross amounts are billed, the difference between net and gross is a late payment charge and shall be so specified.

Customer charges for all special services relating to providing the basic utility service including, but not limited to, reconnect charge and different categories of service calls shall be specified.

c. A copy of the utility's rules, or terms and conditions, describing the utility's policies and practices in rendering service shall include:

(1) and (2) No change.

(3) General statement indicating the extent to which the utility will provide service in the adjustment of customer appliances at no additional customer charge ~~over the filed commodity rates of rate-regulated utilities or commodity rates charged by non-rate-regulated utilities.~~

(4) to (7) No change.

(8) ~~A copy of each standard and special contract for the purchase, sale or interchange of gas.~~ All tariffs must provide that, notwithstanding any other provision of this tariff or contract with reference thereto, all rates and charges contained in this tariff or contract with reference thereto may be modified at any time by a subsequent filing made pursuant to the provisions of Iowa Code chapter 476.

(9) to (17) No change.

(18) Rate-regulated utilities shall include a list of service areas and the applicable rates in such form as to facilitate ready determination of the rates available in each municipality and in such unincorporated communities as have service at urban rates. ~~If the utility has various rural rates, the areas where the same are available shall be indicated.~~

(19) to (22) No change.

19.2(5) Annual, periodic and other reports to be filed with the board.

a. System map verification. A utility shall file annually with the board verification that it has a ~~currently~~ correct set of

utility system maps for each operating or distribution area. The maps shall show:

~~(1) Gas production plant.~~

~~(2) Principal storage holder.~~

(3 ~~1~~) Peak shaving facilities location.

(4 ~~2~~) Feeder and distribution mains indicating size and pressure.

(5 ~~3~~) System metering (town border stations and other supply points).

(6 ~~4~~) Regulator stations in system indicating inlet and outlet pressures.

(7 ~~5~~) Calorimeter location.

(8 ~~6~~) State boundary crossing.

(9 ~~7~~) Franchise area.

(10 ~~8~~) Names of all communities (post offices) served.

b. to f. No change.

g. Reports to federal agencies. Copies of reports submitted pursuant to 49 CFR Part 191 as amended through ~~April 30, 1999~~ *February 1, 2003*, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," shall be filed with the board. Utilities operating in states besides Iowa shall provide to the board data for Iowa only.

h. to k. No change.

This rule is intended to implement Iowa Code section 476.2.

ITEM 3. Amend rule 199—19.3(476) as follows:

199—19.3(476) General service requirements.

19.3(1) No change.

19.3(2) Condition of meter. ~~No meter shall be installed or continued in service which is known to be mechanically defective, has an incorrect correction factor or has not been tested, and adjusted, if necessary, in accordance with 19.6(2) "b," "c," and "e." The capacity of the meter and the index mechanism should be consistent with the gas requirements of the customer. See 199 IAC 19.6(7).~~

19.3(3) Meter reading sheets or cards ~~records~~. The meter reading sheets, cards or ledger sheets ~~records~~ shall show:

a. to e. No change.

19.3(4) to 19.3(6) No change.

19.3(7) Meter reading and billing interval. Readings of all meters used for determining charges and billings to customers shall be scheduled at least monthly and for the beginning and termination of service. Bills to larger customers may, for good cause, be rendered weekly or daily for a period not to exceed one month. Intervals other than monthly shall not be applied to smaller customers, or to larger customers after the initial month provided above, without an exemption from the board. ~~A petition for exemption waiver request must include sufficient information to establish good cause for the exemption the information required by 199—1.3(17A,474,476,78GA,HF2206).~~ If the board denies an exemption a waiver, or if no exemption a waiver is not sought with respect to a large volume customer after the initial month, that customer's bill shall be rendered monthly for the next 12 months, unless prior approval is received from the board for a shorter interval. The group of larger customers to which shorter billing intervals may be applied shall be specified in the utility's tariff sheets, but shall not include residential customers.

An effort shall be made to obtain readings of the meters on corresponding days of each meter-reading period. The utility rules may permit the customer to supply the meter readings by telephone or on a form supplied by the utility. *The utility may arrange for customer meter reading forms to be deliv-*

UTILITIES DIVISION[199](cont'd)

ered to the utility by United States mail, electronically, or by hand delivery. Unless the utility has a plan to test check meter readings, a utility representative will shall physically read the meter at least once each 12 months and when the utility is notified there is a change of customer.

The utility may arrange for the meter to be read by electronic means. Unless the utility has a plan to test check electronic meter readings, a utility representative shall physically read the meter at least once each 12 months.

19.3(8) and 19.3(9) No change.

19.3(10) Extensions and service line extensions to customers.

a. No change.

b. Terms and conditions. The utility shall extend service to new customers under the following terms and conditions: Distribution main extensions.

(1) Plant additions. The utility will provide all gas plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served, or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility shall require, no more than 30 days prior to commencement of construction, the customer or developer to advance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer, which requires an advance by the customer to make plant additions, shall be available for board inspection. The utility shall allow the customer or developer, at the customer's or developer's option, to provide a nonrefundable contribution in aid of construction instead of a refundable advance for construction, under subparagraphs 19.3(10)"b"(2) and (3).

(2) and (3) No change.

(4) Contributions in aid of construction for service line extension. The utility shall finance and construct a service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the service extension to the riser is up to 50 feet on private property or 100 feet on private property if polyethylene plastic pipe is used.

Where the length of the service extension exceeds 50 feet on private property or 100 feet if polyethylene plastic pipe is used, the applicant shall be required to provide a contribution in aid of construction for that portion of the service extension on the private property, exclusive of the riser, in excess of 50 feet or in excess of 100 feet in the case of polyethylene plastic pipe within 30 days after completion. The contribution in aid of construction for that portion of the extension shall be computed as follows:

(Estimated Cost of Construction) ×

$$\left[\frac{\begin{matrix} \text{(Total Length in Excess of 50 Feet)} \\ \text{or (Total Length in Excess of 100 Feet)} \end{matrix}}{\text{(Total Length of Service Extension)}} \right]$$

e. (4) Refunds. When the customer has chosen to make an advance for construction rather than a contribution in aid of construction, The the utility shall refund to the depositor for a period of ten years, from the date of the original advance, a pro-rata share for each service attachment to the distribution main extension. The pro-rata refund shall be computed in the following manner:

(1) I. If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the distribution main extension exceeds the total es-

timated construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.

(2) 2. If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the distribution main extension is less than the total estimated construction cost to provide the extension, the amount to be refunded to the depositor shall equal three times estimated base revenue of the customer attaching to the extension.

(3) 3. In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

c. Service line extensions. The utility shall finance and construct a service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the service extension to the riser is up to 50 feet on private property or 100 feet on private property if polyethylene plastic pipe is used.

Where the length of the service extension exceeds 50 feet on private property or 100 feet if polyethylene plastic pipe is used, the applicant shall be required to provide a contribution in aid of construction, within 30 days after completion, for that portion of the service extension on the private property, exclusive of the riser, in excess of 50 feet or in excess of 100 feet if polyethylene plastic pipe is used. The contribution in aid of construction for that portion of the extension shall be computed as follows:

$$\begin{matrix} \text{(Estimated Construction Costs)} \times \\ \text{(Total Length in Excess of 50 Feet)} \\ \text{or (Total Length in Excess of 100 Feet)} \\ \hline \text{(Total Length of Service Extension)} \end{matrix}$$

d. and e. No change.

19.3(11) No change.

This rule is intended to implement 42 U.S.C.A. § 8372, 10 CFR, 516.30, and Iowa Code section 476.8.

ITEM 4. Amend subrule 19.5(2) as follows:

19.5(2) Standards incorporated by reference.

a. The design, construction, operation, and maintenance of gas systems and liquefied natural gas facilities shall be in accordance with the following standards where applicable:

(1) 49 CFR Part 191, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through March 13, 2002 February 1, 2003.

(2) 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," as amended through March 13, 2002 February 1, 2003.

(3) 49 CFR Part 193, "Liquefied Natural Gas Facilities: Federal Safety Standards," as amended through March 13, 2002 February 1, 2003.

(4) 49 CFR Part 199, "Drug and Alcohol Testing," as amended through March 13, 2002 February 1, 2003.

(5) ASME B31.8 1999, "Gas Transmission and Distribution Piping Systems."

(6) ANSI/NFPA No. 59-2001, "Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants."

b. No change.

ITEM 5. Amend subrule 19.5(3) as follows:

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19.5(3) Adequacy of gas supply. The *natural gas supply* regularly available from ~~pipeline supply~~ sources supplemented by production or storage capacity must be sufficiently large to meet all reasonable demands for firm gas service.

ITEM 6. Amend rule 199—19.6(476) as follows:

Amend subrule 19.6(5), introductory paragraph, and subrule 19.6(6) as follows:

19.6(5) Request tests. Upon request by a customer, a utility shall test the meter servicing that customer. ~~except that such tests~~ A test need not be made more frequently than once in 18 months.

19.6(6) Referee tests. Upon written request by a customer or utility, the utilities board will conduct a referee test of a meter. ~~except that such tests~~ A test need not be made more frequently than once in 18 months. The customer request shall be accompanied by a \$30 deposit in the form of a check or money order made payable to the utility.

Within 5 days of receipt of the written request and payment, the utilities board shall forward the deposit to the utility and notify the utility of the requirement for a test. The utility shall, within 30 days after notification of the request, schedule the date, time and place of the test with the board and customer. The meter shall not be removed or adjusted before the test. ~~and the~~ The utility shall furnish all testing equipment and facilities for the test. If the tested meter is found to be more than 2 percent fast or 2 percent slow, the deposit will be returned to the party requesting the test and billing adjustments shall be made as required in 19.4(13). The board shall issue its report within 15 days after the test is conducted, with a copy to the customer and the utility.

Adopt **new** subrule 19.6(7) as follows:

19.6(7) Condition of meter. No meter that is known to be mechanically defective, has an incorrect correction factor, or has not been tested and adjusted, if necessary, in accordance with 19.6(2)“b,” “c,” and “e,” shall be installed or continued in service. The capacity of the meter and the index mechanism shall be consistent with the gas requirements of the customer.

ITEM 7. Amend subrule 19.7(4) as follows:

19.7(4) Standards for pressure measurements.

a. No change.

b. Working standards. Each utility must have *or have access to* water manometers, ~~mercury manometers~~, laboratory quality indicating pressure gauges, and field-type dead weight pressure gauges as necessary for the proper testing of the indicating and recording pressure gauges used in determining the pressure on the utility's system. Working standards must be checked periodically by comparison with a secondary standard.

ITEM 8. Amend subrule 19.7(7) as follows:

19.7(7) Interruptions of service.

a. No change.

b. Planned interruptions shall be made at a time that will not cause unreasonable inconvenience to customers. ~~and Interruptions~~ shall be preceded by adequate notice to those who will be affected.

ITEM 9. Rescind and reserve rule **199—19.9(476)**.

ITEM 10. Amend paragraph **19.10(1)“d”** as follows:

d. ~~The calculation of the rate factors Re, Rd, Rn and Rz, to be in effect September 1, shall be exclusive of past take-or-pay charges, which may be recovered pursuant to subrule 19.10(5).~~

The purchased gas adjustments shall be adjusted prospectively to reflect the final decision issued by the board in ~~an annual~~ a periodic review proceeding.

ITEM 11. Rescind and reserve subrule **19.10(5)**.

ITEM 12. Amend rule 199—19.11(476) by adding the following **new** subrule:

19.11(6) Executive summary. On or before August 1, 2003, each natural gas utility shall file an executive summary and index of all standard and special contracts in effect for the purchase, sale or interchange of gas. On or before August 1 each year thereafter, each natural gas utility shall file an update of the executive summary and index showing the standard and special contracts in effect on that date for the purchase, sale or interchange of gas. The executive summary shall include the following information:

- a. The contract number;
- b. The start and end date;
- c. The parties to the contract;
- d. The total estimated dollar value of the contract;
- e. A description of the type of service offered (including volumes and price).

ITEM 13. Amend subrule 19.12(4) as follows:

19.12(4) Reporting requirements. Each natural gas utility electing to offer flexible rates shall file ~~semiannual~~ *annual* reports with the board within 30 days of the end of each ~~six 12~~ months. Reports shall include the following information:

a. Section 1 of the report ~~will concern~~ *concerns* discounts initiated in the last ~~six 12~~ months. For all discounts initiated in the last ~~six 12~~ months, the report shall include:

- (1) The identity of the new customers (by account number, if necessary);
- (2) The value of the discount offered;
- (3) The cost-benefit analysis results;
- (4) The cost of alternate fuels available to the customer, if relevant;

(5) The volume of gas sold to or transported for the customer in the preceding ~~six 12~~ months; and

(6) A copy of all new or revised flexible rate contracts executed between the utility and its customers.

b. Section 2 of the report relates to overall program evaluation. For all discounts currently being offered, the report shall include:

(1) The identity of each customer (by account number, if necessary);

(2) The total volume of gas sold or transported in the last ~~six 12~~ months to each customer at discounted rates, by month;

(3) The volume of gas sold or transported to each customer in the same ~~six 12~~ months of the preceding year, by month;

(4) The dollar value of the discount in the last ~~six 12~~ months to each customer, by month;

(5) The dollar value of volumes sold or transported to each customer for each of the previous 12 months; and

(6) If customer charges are discounted, the dollar value of the discount shall be separately reported.

c. Section 3 of the report concerns discounts denied or discounts terminated. For all customers specifically evaluated and denied or having a discount terminated in the last ~~six 12~~ months, the report shall include:

(1) Customer identification (by account number, if necessary);

(2) The volume of gas sold or transported in the last ~~six 12~~ months to each customer, by month;

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(3) The volume of gas sold or transported to each customer in the same ~~six~~ 12 months of the preceding year, by month; and

(4) The dollar value of volumes sold or transported to each customer for each of the past 12 months.

d. No report is required if the utility had no customers receiving a discount during the relevant period and had no customers which were evaluated for the discount and rejected during the relevant period.

ITEM 14. Amend paragraph **19.13(4)“c”** as follows:

c. The utility shall ~~may~~ require a reconnection charge when an end-user receiving transportation service without system supply reserve service requests to return to the system supply. The end-user shall return to the system and receive service under the appropriate classification as determined by the utility.

ITEM 15. Amend rule 199—19.15(476) as follows:

199—19.15(476) Customer contribution fund.

19.15(1) Applicability and purpose. This rule applies to each gas public utility, as defined in Iowa Code sections 476.1 and 476.1B. Each utility shall ~~develop~~ maintain a program plan to assist the utility's low-income customers with weatherization and to supplement assistance received under the federal low-income heating home energy assistance program for the payment of winter heating bills. ~~The program shall be implemented on or before March 1, 1989.~~

19.15(2) Program plan. ~~On or before February 1, 1988,~~ each *Each* utility shall *have on* file with the utilities board a detailed description of its program plan. At a minimum, the plan shall include the following information:

a. A list of the members of the governing board, council, or committee established to determine the appropriate distribution of the funds collected. The list shall include the organization each member represents;

b. A sample of the customer notification with a description of the method and frequency of its distribution;

c. A sample of the authorization form provided to customers; *and*

d. The ~~anticipated~~ date of implementation.

Program plans for new customer contribution funds shall be rejected if not in compliance with this rule. ~~Program plans for existing customer contribution funds existing prior to July 1, 1988, and determined by the board not to be in compliance with this rule shall be allowed until July 1, 1989, to comply, during which time such programs shall continue to operate.~~

19.15(3) to **19.15(6)** No change.

ITEM 16. Amend subrule 19.16(5) as follows:

19.16(5) Rebuttable presumption. All gas available to meet demand in excess of an amount needed to meet the base period demand plus the reserve is presumed to be unjust and unreasonable unless a factual showing to the contrary is made during the ~~annual~~ periodic review of gas proceeding. All gas available to meet demand less than an amount of base period demand plus the reserve is presumed to be just and reasonable unless a factual showing to the contrary can be made during the ~~annual~~ periodic review of gas proceeding.

ITEM 17. Amend rule 199—20.1(476) as follows:

199—20.1(476) General information.

20.1(1) Authorization of rules. Iowa Code chapter 476 provides that the Iowa utilities board shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and

procedure before it, and to govern the form, content and filing of reports, documents and other papers necessary to carry out the provisions of this law.

~~Chapter~~ Iowa Code chapter 478 provides that the Iowa utilities board shall have power to make and enforce rules relating to the location, construction, operation and maintenance of certain electrical transmission lines.

The application of the rules in this chapter to municipally owned utilities furnishing electricity is limited by Iowa Code section 476.1B, and the application of the rules in this chapter to electric utilities with fewer than 10,000 customers and to electric cooperative associations is limited by the provisions of Iowa Code section 476.1A.

20.1(2) Application of rules. The rules shall apply to any electric utility operating within the state of Iowa subject to Iowa Code chapter 476, and to the construction, operation and maintenance of electric transmission lines to the extent provided in Iowa Code chapter 478, and shall supersede all conflicting rules tariffs of any such electric utility which were in force and effect prior to the adoption of their superseding rules on file with the board which are in conflict with these rules.

These rules are intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities.

~~If unreasonable hardship to a utility or to a customer results from the application of any rule herein prescribed, application may be made to the board for the modification of the rule or for temporary or permanent exemption from its requirements. A request to waive the application of any rule on a permanent or temporary basis may be made in accordance with 199—1.3(17A,474,476,78GA,HF2206).~~

The adoption of these rules shall in no way preclude the board from altering or amending them, pursuant to statute, or from making such modifications with respect to their application as may be found necessary to meet exceptional conditions.

These rules shall in no way relieve any utility from any of its duties under the laws of this state.

20.1(3) and **20.1(4)** No change.

ITEM 18. Amend rule 199—20.2(476) as follows:

Amend the catchwords as follows:

199—20.2(476) Records, and reports, and tariffs.

Amend subrule 20.2(2) as follows:

20.2(2) Tariffs to be filed with the board. ~~The utility shall file its tariff with the board, and shall maintain such tariff filing in a current status.~~

The schedules of rates and rules of rate-regulated electric utilities and rules of all utilities shall be filed with the board and shall be classified, designated, arranged and submitted so as to conform to the requirements of this chapter. Provisions of the schedules shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The form, identification and content of tariffs shall be in accordance with these rules.

Utilities which are not subject to the rate regulation provided for by Iowa Code chapter 476, shall not be required to file schedules of rates, rules, or contracts primarily concerned with a rate schedule, with the board and shall not be subject to the provisions related to rate regulations, but nothing contained in these rules shall be deemed to relieve any utility of the requirement of furnishing any of these same schedules or contracts which are needed by the board in the

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performance of the board's duties upon request to do so by the board.

Amend subrules 20.2(3) to 20.2(5) as follows:

20.2(3) Form and identification. All tariffs shall conform to the following rules:

a. and b. No change.

c. All sheets except the title page shall have, in addition to the above-stated requirements, the following further information:

(1) to (3) No change.

d. No change.

20.2(4) Content of tariffs.

a. to g. No change.

~~h. List of towns, cities, and unincorporated communities where urban rates are applicable, and a~~ A list of all communities in which service is furnished at other rates.

i. The list of service areas and the rates shall be filed in such a form as to facilitate ready determination of the rates available in each municipality and in such unincorporated communities as that have service at urban rates. If the utility has various rural rates, the areas where the same are available shall be indicated.

j. to q. No change.

r. Notice ~~by required from a~~ customer required for having service discontinued.

s. to z. No change.

20.2(5) Annual, periodic and other reports to be filed with the board.

a. to c. No change.

d. *Electric service record.* Each utility shall compile a monthly record of electric service showing the production, acquisition and disposition of electric energy, the number of customer terminal voltage investigations made, the number of customer meters tested and such other information as may be required by the board. The monthly "Electric Service" record shall be compiled not later than 30 days after the end of the month covered and such record shall, upon and after compilation, be kept available for inspection by the board or its staff at the utility's principal office within the state of Iowa. A summary of the 12 monthly "Electric Service" records for each calendar year shall be attached to and submitted with the utility's annual report to the board.

e. to i. No change.

j. *Residential customer statistics.* Each rate-regulated electric utility shall file with the board on or before the fifteenth day of each month one copy of the following residential customer statistics for the preceding month:

(1) to (12) No change.

k. No change.

ITEM 19. Rescind and reserve subrule **20.3(2)**.

ITEM 20. Amend subrule 20.3(6) as follows:

20.3(6) Meter reading and billing interval. Readings of all meters used for determining charges and billings to customers shall be scheduled at least monthly and for the beginning and termination of service. Bills to larger customers may, for good cause, be rendered weekly or daily for a period not to exceed one month. Intervals other than monthly shall not be applied to smaller customers, or to larger customers after the initial month provided above, without an exemption a waiver from the board. A petition for exemption waiver request must include sufficient information to establish good cause for the exemption comply with 199—1.3(17A,474, 476,78GA, HF2206). If the board denies an exemption a waiver, or if no exemption a waiver is not sought with respect to a high demand customer after the initial month, that cus-

tomers' meter shall be read monthly for the next 12 months, unless prior approval is received from the board for a shorter interval. The group of larger customers to which shorter billing intervals may be applied shall be specified in the utility's tariff sheets, but shall not include residential customers.

An effort shall be made to obtain readings of the meters on corresponding days of each meter-reading period. When the meter reading date causes a given billing period to deviate by more than 10 percent (counting only business days) from the normal meter reading period, such bills shall be prorated on a daily basis.

The utility may permit the customer to supply the meter readings by telephone or on a form supplied by the utility. *The utility may arrange for customer meter reading forms to be delivered to the utility by United States mail, electronically, or by hand delivery. The utility may arrange for the meter to be read by electronic means.* Unless the utility has a plan to test check meter readings, a utility representative will shall physically read the meter at least once each 12 months.

In the event that the utility leaves a meter reading form with the customer when access to meters cannot be gained and the form is not returned in time for the billing operation, an estimated bill may be rendered.

If an actual meter reading cannot be obtained, the utility may render an estimated bill without reading the meter or supplying a meter reading form to the customer. Only in unusual cases or when approval is obtained from the customer shall more than three consecutive estimated bills be rendered.

ITEM 21. Amend subrule 20.3(13) as follows:

20.3(13) Extensions and service line extensions to customers.

a. No change.

~~b. Terms and conditions. The utility shall extend service to new customers under the following terms and conditions: Distribution or secondary lines other than service lines.~~

(1) Plant additions. The utility will provide all electric plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served, or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility shall require, no more than 30 days prior to commencement of construction, the customer or developer to advance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer which requires an advance by the customer to make plant additions shall be available for board inspection. *The utility shall allow the customer or developer, at the customer's or developer's option, to provide a nonrefundable contribution in aid of construction instead of a refundable advance for construction, under subparagraphs 20.3(13) "b" (2) and (3).*

(2) and (3) No change.

~~(4) Contribution in aid of construction for service line extensions. The utility shall finance and construct either an overhead or underground service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the overhead extension to the first point of attachment is up to 50 feet on private property or where the cost of the underground extension to the meter or service disconnect is less than or equal to the estimated cost of constructing an equivalent overhead service extension of up to 50 feet.~~

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Where the length of the overhead service extension exceeds 50 feet on private property, the applicant shall be required to provide a contribution in aid of construction for that portion of the service extension on the private property, exclusive of the point of attachment, within 30 days after completion. The contribution in aid of construction for that portion of the service extension shall be computed as follows:

$$\frac{(\text{Estimated Cost of Construction}) \times \left[\frac{(\text{Total Length in Excess of 50 Feet})}{(\text{Total Length of Service Extension})} \right]}{1}$$

Where the cost of the underground service extension exceeds the estimated cost of constructing an equivalent overhead service extension of up to 50 feet, the applicant shall be required to provide a contribution in aid of construction within 30 days after completion equal to the difference between the estimated cost of constructing the underground service extension and the estimated cost of constructing an equivalent overhead service extension of up to 50 feet.

e. (4) Refunds. When the customer has chosen to make an advance for construction rather than a contribution in aid of construction, the utility shall refund to the depositor for a period of ten years, from the date of the original advance, a pro-rata share for each service attachment to the extension. The pro-rata refund shall be computed in the following manner:

(1) 1. If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the extension exceeds the total estimated construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.

(2) 2. If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the extension is less than the total estimated construction cost to provide the extension, the amount to be refunded to the depositor shall equal three times estimated base revenue of the customer attaching to the extension.

(3) 3. In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

c. Service line extensions. The utility shall finance and construct either an overhead or underground service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the overhead extension to the first point of attachment is up to 50 feet on private property or where the cost of the underground extension to the meter or service disconnect is less than or equal to the estimated cost of constructing an equivalent overhead service extension of up to 50 feet.

Where the length of the overhead service extension exceeds 50 feet on private property, the applicant shall be required to provide a contribution in aid of construction for that portion of the service extension on the private property, exclusive of the point of attachment, within 30 days after completion. The contribution in aid of construction for that portion of the service extension shall be computed as follows:

$$\frac{(\text{Estimated Construction Costs}) \times \left[\frac{(\text{Total Length in Excess of 50 Feet})}{(\text{Total Length of Service Extension})} \right]}{1}$$

Where the cost of the underground service extension exceeds the estimated cost of constructing an equivalent overhead service extension of up to 50 feet, the applicant shall be required to provide a contribution in aid of construction within 30 days after completion equal to the difference between the estimated cost of constructing the underground service extension and the estimated cost of constructing an equivalent overhead service extension of up to 50 feet.

A utility may adopt a tariff or rule that allows the utility to finance and construct a service line extension of more than 50 feet if the tariff or rule applies equally to all customers or members.

d. and e. No change.

This rule is intended to implement Iowa Code section 476.8.

ITEM 22. Amend rule 199—20.6(476) as follows:

Amend subrule 20.6(5), introductory paragraph, as follows:

20.6(5) Request tests. Upon request by a customer, a utility shall test the meter servicing that customer. ~~except that such tests~~ A test need not be made more frequently than once in 18 months.

Amend subrule 20.6(6) as follows:

20.6(6) Referee tests. Upon written request by a customer or utility, the utilities board will conduct a referee test of a meter. ~~except that such tests~~ A test need not be made more frequently than once in 18 months. The customer request shall be accompanied by a \$30 deposit in the form of a check or money order made payable to the utility.

Within five days of receipt of the written request and payment, the utilities board shall forward the deposit to the utility and notify the utility of the requirement for a test. The utility shall, within 30 days after notification of the request, schedule the date, time and place of the test with the board and customer. The meter shall not be removed or adjusted before the test. ~~and the~~ The utility shall furnish all testing equipment and facilities for the test. If the tested meter is found to be more than 2 percent fast or 2 percent slow, the deposit will be returned to the party requesting the test and billing adjustments shall be made as required in 20.4(14). The board shall issue its report within 15 days after the test is conducted, with a copy to the customer and the utility.

Adopt ~~new~~ subrule 20.6(7) as follows:

20.6(7) Condition of meter. No meter that is known to be mechanically or electrically defective, or to have incorrect constants, or that has not been tested and adjusted if necessary in accordance with these rules shall be installed or continued in service. The capacity of the meter and the index mechanism shall be consistent with the electricity requirements of the customer.

ITEM 23. Amend subrule 20.7(8) as follows:

20.7(8) Equipment for voltage measurements.
a. Secondary standard indicating voltmeter. Each utility shall have available at least one indicating voltmeter ~~with an accuracy class of 0.25 pursuant to the acceptable standard listed at 20.5(2)“e.”~~ This instrument shall be maintained with error no greater than 0.25 percent of full scale.

b. Working standard indicating voltmeters. Each utility shall have at least two indicating voltmeters ~~of 1.0 accuracy class pursuant to the acceptable standard listed at 20.5(2)“e.”~~ These instruments shall be maintained so as to have as-left errors of no greater than 1 percent of full scale.

c. Recording voltmeters. Each utility must have readily available at least two portable recording voltmeters with a rated accuracy of 1 percent of full scale. ~~pursuant to acceptable standards listed at 20.5(2)“f.”~~

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ITEM 24. Amend subrule 20.8(3) as follows:

20.8(3) Reportable accidents. Each utility shall maintain a summary of all reportable accidents, *as defined in 199—25.5(476,478)*, arising from its operations.

ITEM 25. Amend paragraph **20.10(2)“c”** as follows:

c. Generating capacity estimates or allocations among and within classes shall recognize that utility systems are designed to serve both peak and off-peak demand, and shall attribute costs based upon both peak period demand and the contribution of off-peak period demand in determining generation mix. Generating capacity estimates and allocations among and within classes shall be based on load data for each class as described in ~~20.13(3)“e”(5)~~ *199—subrule 35.9(2)*.

ITEM 26. Rescind and reserve subrules **20.10(7)**, **20.10(8)**, and **20.10(9)**.

ITEM 27. Amend rule 199—20.11(476) as follows:

199—20.11(476) Customer notification of peaks in electric energy demand. Each electric utility shall inform its customers of the significance of reductions in consumption of electricity during hours of peak demand.

20.11(1) Annual notice. Each electric utility shall provide its customers, on an annual basis, with a written notice explaining how growth in demand affects a utility's investment costs and why reduction of customer usage during periods of peak demand may help delay or reduce the amount of future rate increases. ~~On or before April 1 of each year, the utility shall either request board approval of its proposed annual notice or file a letter with the board stating that a previously approved annual notice will be used. This letter shall include the date of board approval of the annual notice. An approved~~ *The notice shall be delivered to its customers between May 1 and June 15 of each year if peak demand is likely to occur during the months of June through September. A copy of the notice, together with an affidavit showing when and how the notice was delivered, shall be filed with the board on or before June 30 of each year. If peak demand usually occurs during the months of October through February, the utility on or before July 1 of each year, shall either request board approval of its proposed annual notice or file a letter with the board stating that a previously approved annual notice will be used. This letter shall include the date of board approval of the annual notice. An approved* *the notice shall be delivered to its customers between August 1 and September 15 of each year. A copy of the notice, together with an affidavit showing when and how the notice was delivered, shall be filed with the board on or before September 30 of each year.*

20.11(2) Notification plan. ~~On or before April 15, 1983, each~~ *Each* investor-owned utility shall *have on file* with the board a plan to notify its customers of an approaching peak demand on the day when peak demand is likely to occur.

a. and b. No change.

20.11(3) Implementation of notification plan. ~~Upon approval of a peak notification plan by the board, the utility shall immediately prepare for implementation of the plan. The utility shall implement the approved plan on each day of the year when peak demand is likely to occur, as prescribed by 20.11(2)“b.”~~

20.11(4) and **20.11(5)** No change.

ITEM 28. Rescind and reserve rule **199—20.12(476)**.

ITEM 29. Amend subrule 20.14(4) as follows:

20.14(4) Reporting requirements. Each *rate-regulated* electric utility electing to offer flexible rates shall file ~~semi-annual~~ *annual* reports with the ~~commission board~~ within 30

days of the end of each ~~six~~ *12* months. Reports shall include the following information:

a. Section 1 of the report ~~will concern~~ *concerns* discounts initiated in the last ~~six~~ *12* months. For all discounts initiated in the last ~~six~~ *12* months, the report shall include:

- (1) The identity of the new customers (by account number, if necessary);
- (2) The value of the discount offered;
- (3) The cost-benefit analysis results;
- (4) The end-use cost of alternate fuels or energy supplies available to the customer, if relevant;
- (5) The energy and demand components by month of the amount of electricity sold to the customer in the preceding ~~six~~ *12* months.

b. Section 2 of the report relates to overall program evaluation. Amount of electricity refers to both energy and demand components when the customer is billed for both elements. For all discounts currently being offered, the report shall include:

- (1) The identity of each customer (by account number, if necessary);
- (2) The amount of electricity sold in the last ~~six~~ *12* months to each customer at discounted rates, by month;
- (3) The amount of electricity sold to each customer in the same ~~six~~ *12* months of the preceding year, by month;
- (4) The dollar value of the discount in the last ~~six~~ *12* months to each customer, by month; and
- (5) The dollar value ~~of~~ of sales to each customer for each of the previous 12 months.

c. Section 3 of the report concerns discounts denied or discounts terminated. For all customers specifically evaluated and denied or having a discount terminated in the last ~~six~~ *12* months, the report shall include:

- (1) Customer identification (by account number, if necessary);
 - (2) The amount of electricity sold in the last ~~six~~ *12* months to each customer, by month;
 - (3) The amount of electricity sold to each customer in the same ~~six~~ *12* months of the preceding year, by month; and
 - (4) The dollar value of sales to each customer for each of the past 12 months.
- d. No change.

ITEM 30. Amend rule 199—20.15(476) as follows:

199—20.15(476) Customer contribution fund.

20.15(1) Applicability and purpose. This rule applies to each electric public utility, as defined in Iowa Code sections 476.1, 476.1A, and 476.1B. Each utility shall ~~develop~~ *maintain* a program plan to assist the utility's low-income customers with weatherization and to supplement assistance received under the federal low-income ~~heating home~~ energy assistance program for the payment of winter heating bills. ~~The program shall be implemented on or before March 1, 1989.~~

20.15(2) Program plan. ~~On or before February 1, 1989, each~~ *Each* utility shall *have on file* with the ~~utilities~~ board a detailed description of its ~~proposed~~ *current* program plan. At a minimum, the plan shall include the following information:

- a. A list of the members of the *governing board, council, or committee* established to determine the appropriate distribution of the funds collected. The list shall include the organization each member represents;
- b. A sample of the customer notification with a description of the method and frequency of its distribution;
- c. A sample of the authorization form provided to customers;

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d. The anticipated date of implementation.

Program plans for new customer contribution funds shall be rejected if not in compliance with this rule. ~~Program plans for existing customer contribution funds existing prior to July 1, 1988, and determined by the board not to be in compliance with this rule shall be allowed until July 1, 1989, to comply, during which time such programs shall continue to operate.~~

20.15(3) to **20.15(6)** No change.

ITEM 31. Rescind and reserve rule **199—20.16(476)**.

ITEM 32. Amend rule 199—20.17(476) as follows:

199—20.17(476) Ratemaking treatment of emission allowances.

20.17(1) to **20.17(12)** No change.

20.17(13) Prudence of allowance transactions. The prudence of allowance transactions shall be determined by the board in the annual periodic electric energy supply and cost review. The prudence review of allowance transactions and accompanying compliance plans shall be based on information available at the time the options or plans were developed. Costs recovered from ratepayers through the energy adjustment that are deemed imprudent by the board shall be refunded with interest to ratepayers through the energy adjustment as specified in rule 20.9(476).

ITEM 33. Amend rule 199—21.1(476) as follows:

199—21.1(476) Application of rules.

21.1(1) *Application of rules.* The rules apply to any water utility operating within the state of Iowa under the jurisdiction of the Iowa utilities board and are established under Iowa Code chapter 476.

These rules are intended to promote service to the public, provide standards for uniform practices by utilities, and establish a basis for determining the reasonableness of the demands made by the public upon the utilities.

~~If unreasonable hardship to a utility or to a customer results from the application of any rule prescribed, application may be made to the board for the modification of the rule or for temporary exception from its requirements. A utility or customer may file for a waiver of these rules in accordance with the provisions of 199—1.3(17A,474,476,78GA,HF2206).~~

These rules shall not relieve a utility from its duties under the laws of this state.

21.1(2) *Authorization of rules.* Iowa Code chapter 476 provides that the Iowa utilities board shall establish all needful, just, and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, content, and filing of reports, documents, and other papers necessary to carry out the provisions of this law.

ITEM 34. Amend subrule 21.2(1) as follows:

21.2(1) ~~Notice of location~~ Location and retention of records. Unless otherwise specified in this chapter, the utility shall keep the board informed in writing of the location at which the utility keeps the various classes of records, such as all records required by these rules shall to be kept and preserved in accordance with the applicable provisions of Iowa Administrative Code 199—Chapter 18., “Utility Records.”

ITEM 35. Amend paragraph **21.3(5)“e,”** first unnumbered paragraph, as follows:

This rule shall not be construed as prohibiting an individual, partnership, or company from constructing its own exten-

sion. An extension constructed by a nonutility entity must meet at a minimum the applicable portions of the standards in 21.5(1) and 21.5(2) and such other reasonable standards as the utility may employ in constructing extensions, so long as the standards do not mandate a particular supplier. All connections to the utility-owned equipment or facilities shall be made by the utility at the applicant’s expense. At the time of attachment to the utility-owned equipment or facilities, the applicant shall transfer ownership of the extension to the utility and the utility shall book the original cost of construction of the extension as an advance for construction, and re-funds shall be made to the applicant in accordance with 21.3(12.5)“c.” The utility shall be responsible for the operation and maintenance of the extension after attachment.

ITEM 36. Amend subrule 21.6(6) as follows:

21.6(6) Request tests. A utility shall test any water meter upon written request of a customer. ~~provided a request is not made~~ *The utility will not be required to perform request tests more than once each 18 months. The customer shall be given the opportunity to be present at the request tests.*

ITEM 37. Amend paragraph **21.8(3)“e”** as follows:

e. An affidavit from the utility showing that the notice required by Iowa Code Supplement section 476.6(18)“c” and subrule 21.8(4) has been provided and paid for by the applicant and mailed by the utility to all affected customers.

ITEM 38. Adopt **new** rule 199—35.14(476) as follows:

199—35.14(476) New structure energy conservation standards. A utility providing gas or electric service shall not provide service to any structure completed after April 1, 1984, unless the owner or builder of the structure has certified to the utility that the building conforms to the energy conservation requirements adopted under 661—16.801(103A) and 661—16.802(103A). If this compliance is already being certified to a state or local agency, a copy of that certification shall be provided to the utility. If no state or local agency is monitoring compliance with these energy conservation standards, the owner or builder shall certify that the structure complies with the standards by signing a form provided by the utility. No certification will be required for structures that are not heated or cooled by electric service, or are not intended primarily for human occupancy.

ITEM 39. Adopt **new** rule 199—35.15(476) as follows:

199—35.15(476) Exterior flood lighting.

35.15(1) Newly installed lighting. All newly installed public utility-owned exterior flood lighting shall be high-pressure sodium lighting or lighting with equivalent or better energy efficiency.

35.15(2) In-service lighting replacement schedule. In-service lighting shall be replaced with high-pressure sodium lighting or lighting with equivalent or better energy efficiency when worn out due to ballast or fixture failure for any other reason, such as vandalism or storm damage. A utility shall file with the board as part of its annual report required in 199—Chapter 23 a report stating progress to date in converting to high-pressure sodium lighting or lighting with equivalent or higher energy efficiency.

35.15(3) Efficiency standards. The standard for lighting efficiency shall be expressed in “lumens per watt.” A schedule of lumens per watt, correlated to bulb size, shall be used to reflect the inherent increase in efficiency as bulb size increases. The table of values for lighting efficacy extracted from the Standard Handbook for Electrical Engineers, Donald G. Fink and H. Wayne Beaty, Eds., Twelfth Edition, Table

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26-14, shall be the standard for high-pressure sodium street and security lighting, within a 10 percent range below the stated values.

ITEM 40. Adopt **new** rule 199—36.7(476) as follows:

199—36.7(476) New structure energy conservation standards. A utility providing gas or electric service shall not provide such service to any structure completed after April 1, 1984, unless the owner or builder of the structure has certified to the utility that the building conforms to the energy conservation requirements adopted under 661—16.801(103A) and 661—16.802(103A). If this compliance is already being certified to a state or local agency, a copy of that certification shall be provided to the utility. If no state or local agency is monitoring compliance with these energy conservation standards, the owner or builder shall certify that the structure complies with the standards by signing a form provided by the utility. No certification will be required for structures that are not heated or cooled by electric service, or are not intended primarily for human occupancy.

ITEM 41. Adopt **new** rule 199—36.8(476) as follows:

199—36.8(476) Exterior flood lighting.

36.8(1) Newly installed lighting. All newly installed public utility-owned exterior flood lighting shall be high-pressure sodium lighting or lighting with equivalent or better energy efficiency.

36.8(2) In-service lighting replacement schedule. In-service lighting shall be replaced with high-pressure sodium lighting or lighting with equivalent or better energy efficiency when worn out due to ballast or fixture failure for any other reason, such as vandalism or storm damage. A utility shall file with the board as part of its annual report required in 199—Chapter 23 a report stating progress to date in converting to high-pressure sodium lighting or lighting with equivalent or higher energy efficiency.

36.8(3) Efficiency standards. The standard for lighting efficiency shall be expressed in “lumens per watt.” A schedule of lumens per watt, correlated to bulb size, shall be used to reflect the inherent increase in efficiency as bulb size increases. The table of values for lighting efficacy extracted from the Standard Handbook for Electrical Engineers, Donald G. Fink and H. Wayne Beaty, Eds., Twelfth Edition, Table 26-14, shall be the standard for high-pressure sodium street and security lighting, within a 10 percent range below the stated values.

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